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CHANDIGARH ADMINISTRATION
HOME DEPARTMENT

Notification

The 22nd March, 2024

No.10808-Judicial-2024/4016.—In partial modification of the Chandigarh Administration Home Department Notification No.10808-IH(8)-2020/5613, dated 1st June, 2020 and in exercise of the powers conferred under Sub-Section (1) of Section 4 of The Advocates' Welfare Fund Act, 2001 read with Government of India, Ministry of Home Affairs Notification issued vide F.No.U-11030/1/2001-UTL, dated 25.10.2001, the Administrator, Union Territory, Chandigarh is pleased to re-constitute the Chandigarh Advocates' Welfare Fund Trustee Committee in Union Territory, Chandigarh comprising of the following, till further orders :—

1.	Ms. Munisha Gandhi, Senior Advocate	Chairperson Ex-Officio
2.	Joint/Additional/Special Secretary Home, Chandigarh Administration.	Member Ex-Officio
3.	Legal Remembrancer, U.T., Chandigarh.	Member Ex-Officio
4.	Chairman, Bar Council of Punjab & Haryana and U.T., Chandigarh.	Member Ex-Officio
5.	Public Prosecutor, Chandigarh Administration	Member
6.	(a) Sh.Suvir Sidhu, Member, Bar Council of Punjab & Haryana and U.T., Chandigarh. (b) Sh.Harpreet Singh Multani, Member, Bar Council of Punjab & Haryana and U.T., Chandigarh.	Members
7.	Secretary of the State Bar Council	Secretary Ex-Officio

The Chairperson at Serial No.1 and the Member(s) at Serial No.5 & 6 shall hold office in accordance with the provisions of Sub-Section (4) & (5) of Section 4 of The Advocates' Welfare Fund Act, 2001.

Chandigarh :
26th March, 2024.

NITIN KUMAR YADAV, IAS
Home Secretary,
Chandigarh Administration.

(1079)

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CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 18th March, 2024

No. 13/2/94-HII(2)-2024/4466.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **108/2018** dated **18.01.2024** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

CHANDAN KUMAR, AGED 33 YEARS, S/O LATE SH. HARI RAM, R/O HOUSE NO. 1836,
PHASE - 1, RAM DARBAR, UNIOIN TERRITORY CHANDIGARH. (Workman)

AND

1. M/S EMPLOYEES STATE INSURANCE CORPORATION, REGIONAL HEADQUATERS, SECTOR 19-A, MADHYA MARG, U.T. CHANDIGARH THROUGH ITS REGIONAL DIRECTOR.
2. THE DEPUTY DIRECTOR, ESI CORPORATION MODEL HOSPIRAL, INDUSTRIAL AREA, PHASE - 2, UNION TERRITORY CHANDIGARH.
3. M/S EAGLE EYE SECURITY AGENCY, BOOTH NO. 433, SECTOR 8 (BEHIND PETROL PUMP), PANCHKULA, HARYANA. (Management)

AWARD

1. Chandan Kumar, workman has presented industrial dispute under Section 2A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that the workman joined the services of managements/employers No.1 & 2 w.e.f. 12.11.2009 and worked continuously without any interruption or break in the services till 10.09.2017. On 11.09.2017, the workman was served transfer letter dated 06.09.2017 with the order that the services of the workman are transferred to Ambala City, which place is about 50 kilometer from Chandigarh. On 11.09.2017 the workman was not allowed to join his duties at ESI Hospital, Chandigarh. The workman was working as Sweeper. At the time of retrenchment of services, he was drawing wages @ ₹12,670/- per month i.e. as per DC Rates. The workman worked up to the entire satisfaction of his employer. The workman was never issued any show cause notice, warning, charge-sheet or any other memo to question his work and conduct till 01.07.2017 covering his service period more than 07 years. The workman worked in the hospital when the contractor was M/s Golden Eagle Security Company till 31.03.2011. After this another contractor in the name and style of M/s Eagle Eye Security Agency took over the charge from 01.04.2011 and remained there till 30.04.2016. Then another contractor in the name and style of M/s Pawan Bajaj Contractor took charge w.e.f. 01.05.2016 and left the charge on 30.06.2017. Now fourth contractor in the name of M/s Eagle Eye Security Agency took charge w.e.f. 01.07.2017. With the change of contractors, the services of the workman were not disturbed. The four contractors mentioned above neither appointed the workman nor terminated the services. All the workers worked continuously. They were neither retrenched nor removed from the service with the change of contractors from time to time. At the time of his appointment, he was not issued appointment letter. No terms & conditions were settled in between the workman and the management / employers. The workman is enrolled under ESI Scheme and Provident Fund Scheme. When the workman joined the services of the employer, there were more than 35 workers working in the ESIC Hospital. At the time of joining the services of ESIC Hospital, the workers were not paid even the minimum rate of wages. The workers formed the Union and through the union raised their genuine demands and the management / employer settled to pay the wages at the DC Rates applicable in Chandigarh. The workman being an active worker of the Union was joining meetings of the general body of the Union and was taking up the issues of worker from time to time with the management. These activities of the workman were not acceptable to the management / employer especially present contractor M/s Eagle Eye Security Agency and

they started indulging in unfair labour practices and putting pressure on the workman to quit the union and its activities. As the workman was performing his duties strictly as per the provisions of Trade Unions Act, 1926 (*here-in-after 'Act 1926'*) but the management / employer was illegally suppressing the lawful activities of the workers. Verbal order of employer dated 11.09.2017 for denying duty at ESI Hospital, Chandigarh is illegal, unjustified, against the principles of natural justice, highly arbitrary and patently mala fide and liable to be set aside on the following grounds :-

- (i) The workman worked continuously for more than 7 years and at the time of his retrenchment/ termination neither any notice of retrenchment was served nor notice pay was paid to him. The order of retrenchment / termination dated 11.09.2017 was passed in violation of Section 25F of the ID Act.
- (ii) At the time of passing verbal orders of retrenchment / termination of the services of the workman, his juniors were retained in the service. Hence, order dated 11.09.2017 was passed in violation of Section 25G of the ID Act.
- (iii) No charge-sheet was served on the workman, no inquiry was held and no opportunity was given to the workman to defend himself.
- (iv) At the time of his appointment in ESI Hospital, there was no settlement that job of the workman is transferrable which is about 50 kilometer from present posting. The retrenchment / termination of the workman is done by way of punishment and not termination simplicitor.

After the termination of his services, the workman raised demand notice dated 27.10.2017 under Section 2A of the ID Act. The conciliation proceedings before the Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh also failed vide Memo No. 2141 dated 04.06.2018. Prayer is made that the workman may be re-instated in the services with continuity of services and full back wages.

3. On notice, management No.1 & 2 contested the claim statement by filing written reply dated 16.05.2019, filed on 17.05.2019 on behalf of management No.1 & 2, signed by Mr. H. S. Meena - Deputy Director of management No.2 wherein it is submitted that the present reply is being signed, verified and filed by Mr. H. S. Meena - Deputy Director of management No.2. He is well conversant with the facts of the present case and competent to file and sign the reply.

4. Further, preliminary objections are raised on the grounds that the claim petition is not maintainable as per facts and law qua management No.1 as the claimant-workman was never employed directly or indirectly at any point of time by the management No.1. No relationship of employer-employee is established at any point of time between management No.1 and the claimant-workman. The claim petition is bad for mis-joinder and non-joinder of parties as management No.1 is unnecessarily made party in the claim petition despite the fact that the claimant-workman does not disclose any cause of action qua management No.1. No relief is sought against the management No.1. The workman is not entitled for any relief qua management No.1. The management No.1 is Employee' State Insurance Corporation, a Social Security Organisation, creation of special Act of Parliament, working under administration & control of Ministry of Labour & Employment, Government of India. Management No.1 has no administrative authority to deal with any kind of administrative affairs of management No.2. The Medical Superintendent of management No.2 has independent powers to take all the administrative decision for management No.2. No cause of action arose qua management No.2 under the ID Act. The claimant-workman was not direct employee of management No.2 but was employed by contractor-management No.3 under a contract and his engagement with the management No.2 as per contract agreement executed between management No.2 & 3. The claimant-workman has never worked under the supervision & control of management No.2. The relief of retrenchment compensation / reinstatement, if any, at the best is the dispute between the claimant-workman and management No. 3. The answering managements have no role to play in it. The relationship between management No. 2 & 3 was contractual valid from 01.07.2017 to 30.06.2018 and the same is extended up to 30.06.2019. As per the contract, management No.3 was well within in his powers to engage casual workmen on contractual basis and all the administrative actions against any of workman like transfer / termination of services was with management No.3. The wages are paid to contractors, management No.3 as per the minimum wages for the workers, who were deployed by

management No.3 with the answering management-hospital, as per the bills submitted by management No.3 to management No.2. Besides, the work contract executed between management No.2 & 3 makes it emphatically clear in an un-ambiguous terms that the wages of the workmen employed by contractor shall be paid to him only and even the requisite contribution towards EPF and ESI shall be deposited by contractor / management No.3 with the statutory authorities. Payment of the contractor, management No.3 under the work contract is to be made by the answering management No.2 as per his bills and the payments to the workers are to be made by management No.3. The claimant-workman is not a 'workman' within the meaning of Section 2(s) of the ID Act. The claimant-workman was not employed by management No.2. The claimant-workman was employed by management No.3. There was no industrial dispute between the claimant-workman and management No.3, therefore, there was no industrial dispute between the claimant-workman and the answering management. The claimant-workman is not entitled to the benefits of Section 25F of the ID Act as the termination of the services is not a retrenchment as per Section 2(oo) of the ID Act. The claimant-workman is also not entitled for any relief because he has not employed continuously for 240 days in a year with the answering management No.2. This fact corroborates the contention of the answering management that the claimant workman was contractual and his case falls within the ambit of Section 2(oo)(bb) of the ID Act with the management No.3 and the claimant-workman is not entitled for any retrenchment compensation qua the answering management. The claimant-workman was employed by the contractor-management No.3, who executed the work contract with the answering management No.2. One complaint was given by Smt. Suman W/o Om Parkash working in hospital against the claimant-workman regarding harassment and misbehaving. The said complaint was forwarded by management No.2 to management No.3 vide letter dated 05.09.2017. The management No.3 / contractor has issued warning letter to the claimant-workman and then transferred him to Government Polytech College, Ambala City and the letter of intimation forwarded to management No.2. Besides, the above fact, the claimant-workman not being the direct employee of the answering management cannot seek reinstatement under law and the claim application qua the answering management is liable to be dismissed. Besides, the claim petition is liable to be dismissed as per the law enunciated by Hon'ble Supreme Court in General Manager (OSD), Bengal Nagpur Cotton Mills, Rajnandgaon Versus Bharat Lal etc. reported in 2011 LLR 113 and International Airport Authority of India Versus International Air Cargo Workers' Union & Another reported in 2009(3) LLN 489.

5. Further on merits, it is stated that complaint was given by one Smt. Suman W/o Mr. Om Parkash working in hospital in Ladies Section against the claimant-workman regarding harassment and misbehaving. The said complaint was forwarded by management No.2 to management No.3 vide letter dated 05.09.2017. Management No.3 / contractor had issued warning letter to the claimant-workman and then transferred him to Government Polytech College, Ambala City and letter of intimation forwarded to answering management. Above that, the engagement of workman was contractual as per the work contract by the answering management No.2 and the appointment of the workman falls under Section 2(oo)(bb) of the ID Act. Therefore, the claimant-workman is not entitled to the benefits as per Section 25F of the ID Act. It is a matter of record that at the time of joining service more than 35 workers were working in ESIC Hospital. The payment to the contractor under the work contract is to be made by the answering management No.2 and the payment to the workers are to be paid by management No.3. The payment to contractor / management No.3 are made as per DC rates by the answering defendants No.2 as it is evident from bills and invoices. Further similar stand is taken as taken in the preliminary objections. Rest of the averments of claim statement are denied as wrong and prayer is made that the claim petition may be dismissed.

6. Management No.3 contested the claim statement by filing separate written reply wherein it is stated that the present reply is being signed, verified and filed by M/s Eagle Eye Security Agency through its Proprietor Col. Nirbhay Singh, who is well conversant with the facts of the present case.

7. Further preliminary objections are raised on the ground that the present claim petition is not maintainable as the workman has not approached this Hon'ble Tribunal with clean hands and concealed true and material facts. The workman himself did not join the duty assigned to him and left the job without giving any information to management No.3. The workman cannot take benefit of his own wrong. The workman was transferred to Ambala by management No.3, whereas there was complaint against him by women employee

for harassment and he was running under warning by management No.3. Instead of joining his duties at Ambala, the workman absconded. The present petition is bad in the eyes of law and contrary to Section 2(s) of the ID Act. There had been no dispute of employee and workman at any point of time between the management No.3 and the claimant-workman. The claimant-workman is not entitled for any benefits under Section 25F of the ID Act as termination of his services is not a retrenchment as per Section 2(oo) of the ID Act. Claimant-workman is not entitled to any relief as he was not in a continuous service with the answering management for more than 240 days in a year, hence the claimant-workman is not entitled to any retrenchment compensation qua management No.3.

8. Further on merits, it is stated that no cause of action ever raised in favour of the workman. The workman was running under warning on account of disciplinary action due to serious complaints filed by other employees namely Suman and Poonam against him which contained serious allegations. The workman was given warning vide warning letter No.EESA/HK/W/17 dated 20.07.2017. Even then, the workman did not mend his ways and continued harassing the other employees, especially women employees. Workman has created an atmosphere of insecurity against women co-workers. The answering management also received a letter dated 05.09.2017 from ESI Corporation Model Hospital, Industrial Area, Phase - II, Ramdarbar, Chandigarh against the workman. As per record with management No.3, the workman was appointed as Housekeeper vide appointment letter dated 01.07.2017. Even after warning letter, when the workman did not mend his ways, he was given internal transfer to Ambala vide letter dated 04.09.2017. The workman was instructed to join and report to the Principal of Govt. Polytech, Ambala City at 9:00 A.M. on 11.09.2017 whereas he never turn up there and till date has not reported and joined duty to the instructed location. This clearly shows the intention of the workman to not to continue with the service of the answering management. Hence, he cannot take benefit of his own wrong. The workman may be put to strict documentary proof regarding his statement in para 3, 5 to 14. Rest of the averments of claim statement are denied as wrong and prayer is made that the claim statement may be dismissed.

9. The workman filed rejoinder to the joint written reply / written statement of management No.1 & 2 and separate rejoinder to the written statement of management No.3 wherein the contents of respective written statements except the admitted facts are denied as wrong, false and misleading and averments of claim statement are reiterated.

10. From the pleadings of parties, following issues were framed vide order dated 08.08.2019:-

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether there is no employer-employee relationship between management No.1 and 2 and workman ? OPM-1& 2
3. Relief.

11. In evidence, workman Chandan Kumar examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A' along with documents Exhibit 'W1' to Exhibit 'W5'.

Exhibit 'W1' is failure report bearing Memo No.2141 dated 04.06.2018 of Assistant labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh relating to the demand notice raised by the workman.

Exhibit 'W2' is copy of demand notice dated 27.10.2017 raised by workman Chandan Kumar to The Regional Director - Employees State Insurance Corporation, U.T. Chandigarh, The Deputy Director, ESI Corporation, Model Hospital, U.T. Chandigarh and M/s Eagle Eye Security Agency, Panchkula.

Exhibit 'W3' is copy of internal transfer order bearing reference No.EESA/84/3/4 dated 06.09.2017 issued by Proprietor, M/s Eagle Eye Security Agency, whereby Chandan Kumar (Safai Karamchhari) working on contract basis as ESI Corporation Model Hospital, Ramdarbar, Chandigarh was transferred to Govt. Polytech College, Ambala City w.e.f. 11.09.2017 and the workman was directed to report to the Principal of Govt. Polytech, Ambala City at 9:00 A.M. on 11th September, 2017 positively.

Exhibit 'W4' is copy of written complaint dated 14.07.2017 addressed from Suman *Safai Karamchhari* to Deputy Director, ESI Hospital, Industrial Area, Phase - II, Ramdarbar Chandigarh.

Exhibit 'W5' is copy of warning letter bearing reference No.EESA/HK/W/17 dated 20.07.2017 issued from Proprietor, Eagle Eye Security Agency to Chandan Kumar - Sweeper, ESI Hospital, Ramdarbar.

12. Workman examined AW2 Rameshwar Singh S/o Bant Singh R/o Village & Post Office Sohana, District Mohali, Punjab, who tendered his affidavit Exhibit 'AW2/A' along with documents i.e. copy of his aadhar card vide **Exhibit 'AW2/1'** and copy of his identity card showing his date of joining 01.02.2021 valid up to 31.07.2021, designation Housekeeping Boy issued by Mirror Touch Service vide Exhibit 'AW2/2'.

13. On 23.11.2022, the workman closed his evidence.

14. On the other hand, management No.1 & 2 examined MW1 Harish Chander - Office Superintendent, ESI Model Hospital, Industrial Area, Phase - II, Ramdarbar, Chandigarh who tendered his affidavit Exhibit 'MW1/A' along with attested copies of documents Exhibit 'MW1/1' to Exhibit 'MW1/18'.

Exhibit 'MW1/1' is notification dated 24.06.2010.

Exhibit 'MW1/2' is agreement dated nil year 2017.

Exhibit 'MW1/3' is acceptance of contract of House-Keeping.

Exhibit 'MW1/4' is letter dated 24.06.2017 issued by Deputy Director ESIC Model Hospital Chandigarh to M/s Eagle Eye Security Agency, Panchkula.

Exhibit 'MW1/5' is Bill dated 31.07.2017.

Exhibit 'MW1/6' is salary sheet for the month of July 2017.

Exhibit 'MW1/7' is Bill dated 31.08.2017.

Exhibit 'MW1/8' is salary sheet for the month of August 2017.

Exhibit 'MW1/9' is Bill dated 30.09.2017.

Exhibit 'MW1/10' is salary sheet for the month of September 2017.

Exhibit 'MW1/11' is Bill dated 31.10.2017.

Exhibit 'MW1/12' is salary sheet for the month of October 2017.

Exhibit 'MW1/13' is computer generated sheet for payment of bill dated 11.09.2017 to Eagle Eye Security Agency.

Exhibit 'MW1/14' is computer generated sheet for payment of bill dated 01.11.2017 to Eagle Eye Security Agency.

Exhibit 'MW1/15' is letter dated 19.07.2017 issued from Suman (Sweeper) to Medical Officer Ram Darbar, Chandigarh.

Exhibit 'MW1/16' is letter dated 05.09.2017 addressed from Deputy Director ESIC Model Hospital Chandigarh to Eagle Eye Security Agency relating to the subject of complaint against Suman (Sweeper).

Exhibit 'MW1/17' is letter dated 06.09.2017 issued on the letter pad of Eagle Eye Security Agency by Col. Narbhai Singh, Prop. to Chandan Kumar.

Exhibit 'MW1/18' is authorisation letter dated 14.12.2022 issued by Mr. Vishal Kumar, Asstt. Director, ESIC Model Hospital, Ram Darbar Chandigarh in favour of Shri Harish Chander, Officer Superintendent, ESIC Model Hospital, Ram Darbar Chandigarh.

15. Management No.3 examined MW2 Suman W/o Om Parkash, who tendered her affidavit Exhibit 'MW2/A' along with self-attested copy of her aadhar card vide Exhibit 'MW2/1'. Management No.3 also examined MW3 Randhir Singh - Authorised Representative of M/s Eagle Security Agency, who tendered his affidavit Exhibit 'MW3/A' along with copies of documents Exhibit 'MW3/1' to Exhibit 'MW3/10'.

Exhibit 'MW3/1' is authority letter dated 25.12.2022 in favour of Randhir Singh.

Exhibit 'MW3/2' is certificate of registration dated 28.10.2020 of M/s Eagle Eye Security Agency.

Exhibit 'MW3/3' is award of house-keeping contract dated 24.06.2017.

Exhibit 'MW3/4' is appointment letter dated 01.07.2017 in favour of workman.

Exhibit 'MW3/5' is complaint dated 19.07.2017 filed by Suman against the workman.

Exhibit 'MW3/6' is warning letter dated 20.07.2017 issued by the management No.3 to the workman.

Exhibit 'MW3/7' is letter dated 05.09.2017 issued by management No.1 to management No.3.

Exhibit 'MW3/8' is reply dated 06.09.2017 filed by management No.3.

Exhibit 'MW3/9' is transfer letter dated 04.09.2017.

Exhibit 'MW3/10' is letter dated 13.09.2017 moved by the workman to the management No.1.

16. On 15.09.2023, Learned Representative for management No. 1 & 2 and Learned Representative for management No.3 closed oral evidence. On 16.10.2023 Learned Representative for management No.1 & 2 tendered into evidence certified copies of letters dated 07.02.2014, 11.08.2015 and 29.09.2016 issued by Head Quarter Office, ESIC, New Delhi vide **Exhibit 'M1' to Exhibit 'M3'** respectively. Learned Representative for management No.3 closed documentary evidence on 10.01.2024. Learned Representative for management No.1 & 2 closed documentary evidence on 18.01.2024.

17. I have heard arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise findings are as below :-

Issues No. 1 & 2 :

18. Both these issues are taken up together being interconnected and in order to avoid repetition of discussion.

19. Onus to prove issue No.1 is on the workman and onus to prove issue No.2 is on the management No.1 & 2.

20. In order to prove its claim workman Chandan Kumar stepped into witness box as his own witness as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto, which are not reproduced here for the sake of brevity. AW1 supported his oral version with documents Exhibit 'W1' to Exhibit 'W5'.

21. For corroboration workman examined AW2 Rameshwar Singh, who vide his affidavit Exhibit 'AW2/A' deposed that he is working with the respondents since 2009 in the House above titled respondents formed the union in the year 2016 to stop their rampant exploitation. He (deponent) is elected Treasurer of the union since its formation i.e. 2016. Copy of his UID card is Exhibit 'AW2/1' and copy of the identity card issued by the respondent/employer is Exhibit 'AW2/2'. AW2 further deposed that the workman Chandan Kumar in the present case was elected Joint Secretary of the union, when his services were terminated. The union took up the cause of exploitation of the workers of the ESIC Hospital with the management and the Labour Department, Union Territory, Chandigarh. Due to the intervention of the Worthy Assistant Labour Commissioner and the efforts of the union and its elected office bearers following relief was given to the workers :-

- (i) The management stopped charging the cost of the working uniform from the workers, which was earlier charged from every worker.
- (ii) The rates of wages were fixed for the payment of earned wages at the DC rates applicable in the Union Territory, Chandigarh.
- (iii) The workers were stopped from working at the residence of the High Officials of ESIC and the Hospital.

AW2 further deposed that these demands were achieved by the workers with the efforts of elected office bearers and Executive Committee of the union, which was not acceptable for the respondent / employers. The respondent/employers hatched a conspiracy to shut out the leaders of the union, who was more effective for

the raising of workers demands. The complaints raised by co-worker against Chandan Kumar were managed by the respondent/employer, hence no inquiry was conducted against Chandan Kumar, the workman.

22. On the other hand, the management No.1 & 2 has denied the relationship of employer & employee between the management No.1 & 2 and the workman. To prove its plea management No.1 & 2 examined MW1 Harish Chander, Office Superintendent of ESIC Model Hospital, Industrial Area, Phase - I, Ramdarbar, Chandigarh who vide his affidavit Exhibit 'MW1/A' deposed that he is authorised signatory of ESIC Hospital and is well conversant with the facts of the present case and competent to swear this affidavit through notification Exhibit 'MW1/1'. In the remaining portion of his affidavit MW1 has deposed the entire contents of the written reply filed by management No.1 & 2 jointly which are not reproduced here in order to avoid repetition. MW1 supported his oral version with documents Exhibit 'MW1/1' to Exhibit 'MW1/18'. Learned Representative for management No.1 & 2 referred letters Exhibit 'M1' to Exhibit 'M3', which relates to contractual arrangements for various services in ESIC Hospital and Directorate (Medical), Delhi to engage Group 'C' & 'D' staff.

23. Management No.3 has taken the plea that services of the workman are not terminated. The workman was transferred to Govt. Polytech College, Ambala City w.e.f. 11.09.2017 vide internal transfer order dated 06.09.2017 / Exhibit 'MW3/8'. Besides there were serious complaints from co-workers Poonam and Suman against his conduct i.e. causing harassment to the lady colleagues. Before issuing internal transfer order, the workman was issued warning letter dated 20.07.2017 / Exhibit 'MW3/6' but the workman did not mend his behaviour. To support its plea management No.3 examined MW2 Suman, who vide her affidavit Exhibit 'MW2/A' deposed that she is working as Housekeeping Staff in ESI Hospital, Industrial Area, Phase - I, Ramdarbar, Chandigarh and her aadhar card is Exhibit 'MW2/1'. MW2 further deposed that in July 2017 she made a complaint to Medical Officer, ESI Hospital against Chandan Kumar and Raj Kumar due to mental and physical harassment caused to her. Chandan Kumar along with Raj Kumar used to pass vulgar comments and show inappropriate gestures to her and abuse her. Chandan Kumar and Raj Kumar also instigated her husband while giving false statement about her character and used to spread rumour about her character to co-workers and her husband. The conduct and action of Chandan Kumar and Raj Kumar caused a great mental harassment and disturbed her family life also. Initially she made oral complaints to Randhir Singh - Manager of Eagle Eye Security Agency about Chandan Kumar and Raj Kumar on various occasion. Thereafter, she made written complaint against Chandan Kumar and Raj Kumar to Medical Officer ESI, Hospital and copy of the same was given to the Randhir Singh also. Copy of complaint dated 19.07.2017 is Exhibit 'MW1/15'. On her complaint Randhir Singh - Manager of Eagle Eye Security Agency made them to sit and enquired about the facts of the facts and assured her for taking action against Chandan Kumar and Raj Kumar.

24. Management No.3 examined MW3 Randhir Singh, who vide his affidavit Exhibit 'MW3/A' deposed that he is authorised representative of M/s Eagle Security Agency, Booth No.433, Behind Petrol Pump, Sector 8, Panchkula vide authorization letter dated 25.12.2022 / Exhibit 'MW3/1'. He is well conversant with the facts of the present case and has been an active witness to all acts during the service tenure of the workman Raj Kumar. The copy of certificate of registration of Eagle Eye Security Agency is Exhibit 'MW3/2', the copy of award of contract for housekeeping working ESIC Model Hosital, Chandigarh given to respondent No.3 is Exhibit 'MW3/3' vide letter No.172-D/34/15/01/15/ESI-H-CHD dated 24.06.2017 for one year w.e.f. 01.07.2017 and further extended till 31.01.2021. In his remaining version MW3 deposed all the material contents of the written reply filed by management No.3, the same are not reproduced here in order to avoid repetition. MW3 supported his oral version with documents Exhibit 'MW3/1' to Exhibit 'MW3/10'.

25. From the oral as well as documentary evidence led by the parties, it comes out that the workman was deployed as Housekeeping staff in ESI Hospital, Industrial Area, Phase - II, Chandigarh through contractor. The workman has alleged that he joined the services w.e.f. 12.11.2009 and worked continuously till 10.09.2017 whereas management No.1 & 2 denied the fact that the workman joined the services of the answering managements w.e.f. 12.11.2009 and also denied the fact that the workman worked continuously without any interruption and break in the services till 10.09.2017. Management No.3 has denied the fact as wrong that the workman joined services w.e.f. 12.11.2009 and worked continuously till 10.09.2017. In the present case, the workman has not placed on record copy of his appointment letter showing his date of joining on contractual basis with management No.1 & 2. It is own case of the workman that from the date of joining till 31.03.2011, M/s Golden Eagle Security Company was his contractor. Thereafter, another contractor M/s Eagle Eye

Security Agency took over the charge from 01.04.2011 and remained till 30.04.2016. Thereafter, another contractor M/s Pawan Bajaj took over the charge w.e.f. 01.05.2016 and left the charge on 30.06.2017. Thereafter M/s Eagle Eye Security Agency took charge w.e.f. 01.07.2017. Management No.1 & 2 has simply denied the aforesaid plea of the workman as wrong. There is no specific denial of the management No.1 & 2 that they did not engage the workman through contractor w.e.f. 18.10.2010 and that they never entered into any agreement of employment on contractual basis with various contractors from year 2010. Management No.3 has produced the record of contract with management No.3 for the period w.e.f. 01.07.2017 to 30.06.2018. Management No.3 is silent about the record of the contractor previous to 01.07.2017. MW1 Harish Chander (witness of management No.1 & 2) when put to cross-examination stated that he does not know if workman Chandan Kumar is serving in ESI Model Hospital continuously from 12.11.2009. The denial of fact for want of knowledge is not a specific denial. Under the law the fact, which is not specifically denied is deemed to be admitted. MW3 Randhir Singh (witness of Management No.3) when put to cross-examination by the workman admitted as correct that at the time of beginning of contract with M/s Eagle Eye Security Agency, the contractual employee of previous contractor were taken over and at the time of termination of the contractor with M/s Eagle Eye Security Agency, the contractual employees working at that time were taken over by the next contractor. From above referred version of MW1 and MW3, the workman is proved to be in service of management No.1 & 2 through contractor w.e.f. 12.11.2009, although there is no direct relationship of employer & employee between management No.1 & 2 and the workman. It is not the case of the workman that he has received any wages directly from management No.1 & 2 or that he was appointed by the management No.1 & 2 or that the order of transfer of services was passed by management No.1 & 2. The transfer order produced on record by the workman vide Exhibit 'W3' and produced on record by the management No.3 vide Exhibit 'MW1/17' are passed by Col. Narbhai Singh - Proprietor, Eagle Eye Security Agency, which goes to prove that the services of the workman were governed by his contractor.

26. The fact remained undisputed between the parties that at the time of transfer of the workman, management No.3 was the contractor. In this regard, MW3 Randhir Singh - Authorised Representative of M/s Eagle Eye Security Agency / management No.3 when put to cross-examination by management No.1 & 2 admitted as correct that the management No.3 has executed contractual agreement / Exhibit 'MW1/2' with the management No.2 for providing House-Keeping Services in ESIC Hospital for one year and under this agreement management No.3 has deployed the workmen including the workman. The said contractual agreement was extended from time to time up to 31.01.2021. MW3 admitted as correct that the management No.3 has received the payments as per DC Rates towards wages of workmen. The bills of payment are already exhibited as Exhibit 'MW1/5' to Exhibit 'MW1/14'. MW3 admitted as correct that the complaint received from Suman / Exhibit 'MW1/15' against the workman was forwarded with the letter dated 05.09.2017 by the management No.2 to the management No.3 to take decision on their own level. MW3 admitted as correct that the said complaints / Exhibit 'MW1/15' was decided by the management No.3. MW3 when put to cross-examination by the workman admitted as correct that on 20.07.2017 warning letter was issued to the workman by calling him in the office of the contractor-M/s Eagle Security Agency. The workman was warned that he has committed wrong act and if in future he repeated the same, his services will be dispensed with. No inquiry proceedings were conducted before issuing warning letter dated 20.07.2017 / Exhibit 'MX2'. The workman was transferred vide letter dated 06.09.2017 / Exhibit 'MW1/17'. During the period from 20.07.2017 to 06.09.2017 a complaint dated 05.09.2017 / Exhibit 'MW3/7' was received from ESI Hospital, Ramdarbar against the workman. MW3 admitted as correct that in the letter dated 05.09.2017 ESI Hospital has told the contractor to deal with the complaint received on 21.07.2017 at their own level. MW3 in his cross-examination admitted as correct that before issuing transfer letter no domestic inquiry in writing was conducted against the workman in connection with the allegation levelled by complainant Suman in her complaint Exhibit 'MW1/15'. From the aforesaid version of MW3 it is duly proved on record that lastly the workman was deployed by M/s Eagle Eye Security Agency / management No.3 as contractual employee with management No.2 for providing housekeeping services in ESIC hospital and it is management No.3 which has issued transfer order Exhibit 'MW1/17'.

27. Learned Representative for the workman contended that management No. 2 vide letter dated 05.09.2017 / Exhibit 'MW1/16' issued directions to management No.3 to take action at its own level in connection

with the complaint received from Suman on 21.07.2017 against workers Chandan Kumar and Raju. The contractor / management No.3 without holding any inquiry into the matter, immediately on the next date passed the transfer order dated 06.09.2017 which amounts to transfer by way of punishment. Management No.3 has already issued warning letter dated 20.07.2017 / Exhibit 'W5' / Exhibit 'MW3/6' to workman Chandan Kumar in connection with the complaint dated 19.07.2017 / Exhibit 'W4' / Exhibit 'MW3/5' filed by Suman. The letter dated 05.09.2017 / Exhibit 'MW1/16' addressed from Deputy Director, ESIC Model Hospital, Chandigarh / management No.2 was not accompanied with copy of complaint allegedly received from Suman on 21.07.2017. Except complaint dated 19.07.2017 / Exhibit 'W4' / Exhibit 'MW3/5', no other complaint allegedly filed by Suman is proved into evidence. Moreover, as per appointment letter Exhibit 'MW3/4' the job of the workman is not transferable. The transfer order issued by way of punishment is illegal. Management No.3 did not allow the workman to continue his duty with management No.1 & 2 w.e.f. 11.09.2017.

28. On the other hand, it is contended by Learned Representative for management No.3 that verbal inquiry is sufficient to pass transfer order. To support his contention Learned Representative for management No. 3 referred **judgment dated 08.12.2021** of Hon'ble Supreme Court passed in **Civil Appeal No.7536 of 2011 (arising out of SLP (Civil) No.12369 of 2021)** tilted as **Uttar Pradesh State Road Transport Corporation Versus Gajadhar Nath**.

29. From the rival contention of parties, it comes out that the basis of warning letter Exhibit 'W5' / Exhibit 'MW3/6' and the transfer order Exhibit 'W3' / Exhibit 'MW3/8' issued to the workman Chandan Kumar is the complaint dated 19.07.2017 / Exhibit 'W4' / Exhibit 'MW3/5' / Exhibit 'MW1/15' filed by co-worker Suman. For better appreciation the translated version of Exhibit 'W4' / Exhibit 'MW3/5' / Exhibit 'MW1/15' from Hindi to English language is as below :-

"It is requested that I (Suman) is working at the post of Sweeper in your hospital. I had been working here through contractor from last 15 years. In my staff Chandan and Raju are Housekeeping employees. I have been subjected to mental harassment. Due to which there remain dispute at my home. Both of them level false allegations against my character. My husband Om Parkash is also working in this hospital as Sweeper. They instigate him by uttering wrong information. In case anything happens to me in future, then these people will be responsible. Attention may kindly be paid to the matter. I shall be obliged."

30. While examining herself in the witness box MW2 Suman alleged that Chandan Kumar along with Raj Kumar used to pass vulgar comments and show inappropriate gestures to her and abuse her. The aforesaid version of MW2 finds no reference in the contents of complaint Exhibit 'W4' / Exhibit 'MW3/5' / Exhibit 'MW1/15' referred above, therefore the same being improved version of MW2 is not admissible into evidence. Management No.3 in para 2 on merits of its written reply to claim statement has pleaded that the workman was running under warning on account of disciplinary action due to serious complaint filed by other employees namely Poonam and Suman against him which contained serious allegations. In the present case, management No.3 has withheld the complaint allegedly filed by Poonam. Moreover, alleged complainant Poonam is not examined in the witness box by any of the managements. The warning letter Exhibit 'W5' / Exhibit 'MW3/6' finds no reference of complaint allegedly moved by Poonam. MW2 Suman when put to cross-examination by the workman stated that she does not know any person namely Poonam. The contents of warning letter Exhibit 'W5' / Exhibit 'MW3/6' translated from Hindi to English language are mentioned as below :-

"In reference to the complaint filed by women cell Smt. Suman, you are informed that Suman has complained that you have misbehaved which is regrettable. Hence, you are warned that if you repeated same act, your services will be dispensed with."

In view of the contents of warning dated 20.07.2017 / Exhibit 'W5' / Exhibit 'MW3/6', the contention of the management No.3 that the workman Chandan Kumar was running under warning on account of disciplinary action due to serious complaint filed by other employees namely Poonam and Suman against him which contained

serious allegations is not acceptable. The complainant Suman / MW2 when put to cross-examination by Learned Representative for workman stated that she has seen Exhibit 'MW1/15' which is complaint dated 19.07.2017 filed by her against the conduct of the workman. MW2 identified her signatures at point 'A' and point 'A/1' of Exhibit 'MW1/15'. The careful perusal of signatures of Suman appended at point 'A' and point 'A/1' of Exhibit 'MW1/15' would show that these are signed in two different handwritings. The signatures of Suman at point 'A' of Exhibit 'MW1/15' is in the same handwriting in which the entire complaint is written whereas the signatures at point 'A/1' are similar to the signatures of Suman as appended below her statement recorded on 03.03.2023, 06.07.2023 and 08.08.2023 before this Court. It is own version of MW2 Suman that she has got the complaint dated 19.07.2017 written from someone else i.e. Yogita. MW2 Suman did not disclose the complete particulars of Yogita, to enable the workman to identify her. In this regard MW2 in her cross-examination stated that Yogita is resident of Mouli Jagran, who was her neighbour. She does not remember the name of her husband. MW2 in her cross-examination further stated that she has also moved written complaint to contractor. She does not have any prove of the written complaint moved by her to the contractor. MW2 in her cross-examination further stated that she know little bit about the contents of the complaint Exhibit 'MW1/15'. To my opinion, in view of the above referred version of MW2, no authenticity can be attached to the allegations levelled in complaint Exhibit 'MW1/15' forming basis of warning letter Exhibit 'W5' / Exhibit 'MW3/6'.

31. Management No.3 has alleged that the workman was transferred vide transfer letter dated 06.09.2017 / Exhibit 'MW1/17' / Exhibit 'W3' from ESIC Model Hospital, Ramdarbar, Chandigarh to Govt. Polytech College, Ambala City w.e.f. 11.09.2017 with instruction to report to Principal of Govt. Polytech, Ambala City at 9:00 A.M. on 11.09.2017 positively. But the workman did not report at Ambala. It is argued by Learned Representative for management No.3 that it is not a case of termination of services of the workman. Rather the workman by not joining at Government Polytech, Ambala City has abandoned the job. To support his argument Learned Representative for management No.3 referred cross-examination of AW1 Chandan Kumar wherein he has admitted as correct that vide Exhibit 'W3' letter dated 06.09.2017 he has been transferred from ESI Hospital to Govt. Polytech College, Ambala City w.e.f. 11.09.2017. He has not joined in Govt. Polytech College on 11.09.2017 and never worked thereafter with the contractor i.e. management No.3 and ESI Hospital i.e. management No.1 & 2. As far as transfer of the workman from ESI Model Hospital, Industrial Area, Phase - II, Ramdarbar to Govt. Polytech College, Ambala City (Haryana) is concerned, the management No.3 has failed to prove into evidence that job of the workman was transferable. The appointment letter dated 01.07.2017 / Exhibit 'MW3/4' issued by management No.3 to the workman does not find any clause that job of the workman is transferable. The contents of appointment letter Exhibit 'MW3/4' are reproduced as below :-

- "1. This is in reference to letter No.172-D/34/15/01/15/ESIH-CHD dated 24.06.2017 regarding deployment of House Keeping Staff.
2. Chandan Kumar S/o Sh. Hari Ram R/o #B38/1, Adarsh Coloni, Sec - 54, CHD is being appointed as House Keeper wef. 1st July 2017.
3. You are willing to join duties wef. 1st July 2017 with the condition that you will not join any Union and will not have any link with any Anti-Social Activities.
4. Smooth Functioning of Hospital is very important and you understand that your joining to any Union or Anti Social activities will be against the Smooth Functioning of Hospital and Security Agency have full right to terminate your service.
5. You also understand that this not a Government job but outsourcing services on contractual Basis and you will carry out your duties with Sincerity and dedication."

As per the above mentioned terms & conditions of the appointment letter, the job of the workman is non-transferable. Therefore, the transfer of the workman from the territory of U.T. Chandigarh to Ambala (Haryana) amounts to change in the service condition adversely affecting the interest of the workman. Before issuing transfer letter, the management has not issued any notice of change in the condition of service. Therefore, the transfer order Exhibit 'W3' / Exhibit 'MW3/9' is hit by Section 9A of the ID Act. Consequently, by disallowing

the workman to continue his duties at ESIC Model Hospital, Industrial Area, Phase - II, Ramdarbar, Chandigarh, management No.3 has dispense with the services of the workman. Non-joining at Govt. Polytech College, Ambala in compliance with transfer order dated 06.09.2017, at the most amounts to misconduct on part of the workman. In that situation the management No.3 was required to initiate disciplinary proceedings against the workman for his alleged misconduct. It is not the case of management No.3 that it has issued any show cause notice or charge sheet to the workman calling his explanation for non-joining at Govt. Polytech College, Ambala City. MW3 has denied the suggestion as wrong that the workman was issued transfer letter by way of punishment. To my opinion the management No.3 has failed to controvert the plea of the workman that he was transferred on the basis of letter dated 05.09.2017 moved by management No.2 to the contractor / management No.3 for taking action at their own level on the complaint of Suman. MW3 in his cross-examination stated that the workman was issued warning letter dated 20.07.2017 / Exhibit 'MX2'. The workman was transferred vide letter dated 06.09.2017 / Exhibit 'MW1/17'. During the period from 20.07.2017 to 06.09.2017 a complaint dated 05.09.2017 / Exhibit 'MW3/7' was received from ESI Hospital, Ramdarbar against the workman. MW3 admitted as correct that a letter dated 05.09.2017 ESI hospital has told the contractor to deal with the complaint received on 21.07.2017 at their own level. The above said facts & circumstances would show that immediately after receiving letter dated 05.09.2017, the workman was transferred on 06.09.2017 from ESIC Hospital, Ramdarbar, Chandigarh to Polytech College, Ambala which is transfer as punishment. No order of punishment can be passed without holding domestic inquiry even against the contractual employee. The managements had failed to controvert the fact that the workman has completed continuous service of more than 240 days in 12 calendar months preceding termination of his services as required under Section 25B of the ID Act. The plea of the workman that initially he joined service on 12.11.2009 with the management No.1 & 2 through first contractor M/s Golden Eagle Eye Security Company till 31.03.2011 and then through second contractor M/s Eagle Eye Security Agency from 01.04.2011 to 30.04.2016, then third contractor M/s Pawan Bajaj Security Services from 01.05.2016 to 30.06.2017 and lastly through fourth contractor M/s Eagle Eye Security Agency w.e.f. 01.07.2017 till the issuance of transfer order dated 06.09.2017 is strengthen from the cross-examination of MW3 wherein he has admitted as correct that at the time of beginning of the contract with M/s Eagle Eye Security Agency, the contractual employee of previous contractor were taken over and at the time of termination of the contract with M/s Eagle Eye Security Agency, the contractual employee working at that time were taken over by the next contractor. There initial contract with ESIC Hospital was renewed from time to time which ended in January 2021. At the time of completion of contract period M/s Eagle Eye Security Agency did not pay any compensation to its contractual workers. The discussion made above would prove the plea of the workman that the transfer order Exhibit 'MW3/8' passed on the basis of recommendation of management No.2 to take action against the workman on the basis of complaint of Suman, that too when the management No.3 while taking action on the complaint of Suman has already issued warning letter to the workman accompanied with the fact that there is no other complaint against the workman, is a punishment by way of transfer which attaches stigma to the workman. The judgment of Hon'ble Supreme Court in *Civil Appeal No.7536 of 2021 (supra)* referred by Learned Representative for management No.3 is not applicable to the facts of the present case.

32. The judgment referred by Learned Representative for the workman reported in **2023 Lab. IC 4508 Karnataka** titled as **Chief Officer, Chamarajanagar Versus Government of Karnataka Bangalore** is applicable to the facts of the present case to an extent. The relevant para 2 & 3 of the judgment are reproduced as below :-

"2. Having heard the learned counsel appearing for the parties and having perused the Appeal Papers, we decline indulgence in the matter inasmuch as regardless of the status of an employee, no stigmatic dismissal order can be passed without holding a minimum

inquiry, more particularly when allegations are denied by him. A look at the order of dismissal makes it abundantly clear that the same is heavily stigmatic of the employee concerned. The wild allegations are that he with a malafide intent has destroyed the recorded footage relating to election to the post of President of the Panchayat and that he has betrayed the trust.

3. Dismissing a person from service, whether his engagement is on regular basis or on contract basis, has serious consequences not only on his livelihood but also reputation which is a precondition for other employment. In our system, the principles of natural justice are treated as part of Article 14 vide Cantonment Board v. Taramani Devi, AIR 1995 SC 61. Therefore, no person can be condemned unheard. In Biblical literature, even God is said to have given an opportunity of hearing to Adam and Eve before punishing them for eating the forbidden fruit in the Eden garden. That being the sanctity of audi alteram partem principle, the learned single Judge has rightly set at naught the dismissal order of the employee. He has done justice to both the sides inasmuch as he has treated the period of dismissal as dies non and thereby, denied arrears of wages. Added, liberty is also reserved for holding inquiry if the employer so desires. The impugned order thus has brought about a just result, regardless of arguable lacunae therein. Such orders do not merit challenge."

33. The workman has failed to controvert the fact that the contract of management No.1 & 2 with management No.3 has already expired. In this regard MW3 when put to cross-examination by the workman stated that their initial contract with ESIC Hospital was renewed from time to time which ended in January 2021. At the time of completion of contract period M/s Eagle Eye Security Agency did not pay any compensation to any of its contractual worker. In view of the reasons recorded above, the transfer order dated 06.09.2017 / Exhibit 'W3' / Exhibit 'MW3/8' is illegal and is hereby set aside. The workman is held entitled to lump sum compensation in tune of ₹ 65,000/- to be recovered from management No.3.

34. Accordingly, issue No.1 is decided in favour of the workman and against the management No.3. Issue No.2 is decided in favour of managements No.1 & 2 and against the workman.

Relief :

35. In the view of foregoing finding on the issues above, this industrial dispute is allowed to the effect that the transfer order dated 06.09.2017 / Exhibit 'W3' / Exhibit 'MW3/8' is illegal and is hereby set aside. The workman is held entitled to lump sum compensation in tune of ₹ 65,000/- to be recovered from management No.3. Management No.3 is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the above said amount from the date of this award till the date of actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . . ,

(JAGDEEP KAUR VIRK)

PRESIDING OFFICER,

Industrial Tribunal & Labour Court,

Union Territory, Chandigarh.

UID No. PB0152.

Dated : 18.01.2024.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 18th March, 2024

No. 13/1/9779-HII(2)-2024/4468.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **59/2021** dated **12.01.2024** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

GENERAL SECRETARY, CHANDIGARH GOVT. TRANSPORT WORKERS UNION, INDL. AREA, PHASE - I, WORKSHOP DEPOT NO. 1 CTU, CHANDIGARH VS (Workers's Union)

AND

1. THE TRANSPORT, SECRETARY, CHANDIGARH
2. THE DIVISIONAL MANAGER, CHANDIGARH TRANSPORT UNDERTAKING, U.T. CHANDIGARH. (Management)

AWARD

1. Vide Endorsement No.13/1/9779-HII(2)-2021/5115 Dated 11.05.2021 the Secretary Labour, Chandigarh Administration has referred the dispute to this Court / Tribunal on the demand notice dated 07.03.2020 in respect of Mohan Singh - Conductor No.31 (now Sub-Inspector) CTU, Chandigarh (*hereinafter in referred "workman"*) raised by the President / General Secretary, Chandigarh Govt. Transport Workers Union (*hereinafter referred "workers' union"*) upon the Transport Secretary, Chandigarh Administration & Another (*hereinafter in referred "management"*) under Section 2(k) of the Industrial Disputes Act, 1947 (*hereinafter in short referred "ID Act"*) in following words :-

"Whether the demand raised in the demand notice dated 07.03.2020 by President/General Secretary, Chandigarh Govt. Transport Workers Union, Indl. Area, Phase-I, Workshop Depot No.1, CTU, Chandigarh (Claimant/Complainant) AND (1) The Transport Secretary, Chandigarh Administration (2) The Divisional Manager, Chandigarh Transport Undertaking, UT, Chandigarh are genuine and justified. If so, to what effect and to what relief the Union/Workers are entitled to, if any?"

2. Upon notice, the workers' union appeared through its representative Shri Naresh Chander, who on 20.09.2021 made the statement that the demand notice dated 07.03.2020 may be treated as statement of claim.

3. Briefly stated the facts of demand notice-cum-statement of claim are that a meeting of workers' union was held on 07.03.2020 and it was unanimously resolved that injustice has been done with the workman at the hands of the management by passing illegal order of punishment vide order No.3466/ECC/CTU-III/2014 dated 29.10.2014 / 26.11.2014 whereby one increment of workman Mohan Singh was stopped with cumulative effect, order No.3467/ECC/CTU-III/2014 dated 29.10.2014/26.11.2014 whereby two increment of the workman were stopped with cumulative effect and order No.3468/ECC/CTU/III/2014 dated 29.10.2014/ 26.11.2014 whereby one increment was stopped with cumulative effect. Appeals filed by the workman against these three illegal orders have been dismissed vide order dated 12.12.2019. Therefore, the workers' union has decided to fight for justice on behalf of the workman by raising demand notice and file the case on his behalf before the Assistant Labour Commissioner and Labour Court / Labour Tribunal, U.T. Chandigarh. Further union has authorised President and Secretary of the workers' union to pursue the case on behalf of the

workers' union and to sign necessary pleadings in respect of the same and to take the services of authorised representative to represent the workers' union before Assistant Labour Commissioner as well as before the Labour Court / Labour Tribunal, UT Chandigarh.

4. It is further stated that the workman was illegally charge-sheeted as per charge sheet dated 17.08.2012 on the basis of false report submitted by the checking staff. Workman had issued tickets to all the passengers and no one was without ticket at the time of checking. In spite of admission of the charge, Inquiry Officer was appointed and the Inquiry Officer has not conducted the inquiry in fair & proper manner. There was no material on record and no witnesses were examined to prove charges, the Inquiry Officer submitted his report against the workman. The workman was asked by the punishing authority to admit the charge by assuring that he shall be left with minor punishment only. On the assurance of punishing authority, workman admitted the charge with a hope that he shall be left with minor punishment, because punishing authority was convinced that workman had been implicated falsely. Though there was no material on record against workman on the inquiry file punishing authority passed three orders of punishment i.e. order No.3466/ECC/CTU-III/2014 dated 29.10.2014 / 26.11.2014 whereby one increment of workman Mohan Singh was stopped with cumulative effect, order No.3467/ECC/CTU-III/2014 dated 29.10.2014 / 26.11.2014 whereby two increment of workman were stopped with cumulative effect and order No. 3468/ECC/CTU/III/2014 dated 29.10.2014 / 26.11.2014 whereby one increment was stopped with cumulative effect which amounts to major punishment, though workman was assured that he shall be awarded only minor punishment and in this way punishing authority backed out from his promise. Against all three orders of punishment dated 29.10.2014 / 26.11.2014, workman filed an appeal, but the same was also dismissed vide order dated 12.12.2019 without appreciating the grounds of appeal and other material on record. The inquiry report, punishment orders and order of appellate authority deserves to be set aside on the following grounds amongst others :-

- a) charge-sheet is misconceived and fabricated. Workman had not committed any fraud and had issued proper tickets to all and no passenger was found without ticket at the time of checking.
- b) Inspecting staff neither checked the cash of workman nor recorded the statement of passengers, who were alleged to be found without tickets. CTU have issued instructions from time to time regarding procedure to be followed by the checking staff. In these instructions, it has been made mandatory to check the cash of conductor to record the statement of passengers and give detailed note on waybill in order to avoid false implication of conductors, who were alleged to be found without tickets.
- c) The Inquiry Officer has not conducted the inquiry proceedings in fair & proper manner as well as, as per rules. By mis-representation punishing authority got the confession of workman recorded which was not voluntary, but with an assurance of punishing authority that workman shall be left with minor punishment only i.e. warning or payment of cost of the alleged tickets.
- d) Order of punishing authority is non-speaking in nature and have not given any findings for his conclusion.
- e) The Inquiry Officer as well as punishing authority failed to appreciate that un-punched tickets were taken without the consent of the workman by checking staff themselves. Before checking, Inspectors had taken the ticket box in their possession and while returning the same they took away un-punched tickets without consent of the workman.
- f) No evidence was recorded by punishing authority to prove the alleged misconduct by the workman.
- g) Order of the punishing authority are of the same date and have been passed without any application of order and appreciating the facts of each case.

The workman made several requests to the management to withdraw the illegal orders, but all in vain. Thereafter raised demand notice dated 07.03.2020.

5. On notice, the management appeared through its Clerk Shri Sahil as authorized representative and later on Law Officer appeared on behalf of the management. The management contested the claim of the workman by filing written statement on 23.02.2022, wherein preliminary submission are made that on 28.06.2012 Sh. Tarlochan Singh, Sh. Hakam Singh and Sh. Gurwinder Singh Inspectors reported that on 27.06.2012 Sh. Mohan Singh - Conductor No.31 (workman) while performing duty on the Bus No. CH-01-G-5045 on route No.39 defrauded ₹ 25/- by not issuing ticket of ₹ 5/- to the five passengers from Mohali Phase - 11 to Industrial Area, Phase - 9, Mohali. A charge sheet vide memorandum No.6822/TA-IV/HO/CTU//2012 dated 01.08.2012 was issued against Sh. Mohan Singh - Conductor No.31. Inquiry was conducted by the Law Officer (H)-cum-Inquiry Officer, CTU, Chandigarh vide which the charges levelled against Sh. Mohan Singh Conductor No.31 vide Memo No.6822/TA-IV/HO/CTU/2012 dated 01.08.2012 stands proved. On 29.10.2014 Sh. Mohan Singh - Conductor No.31 was heard in person by the then Divisional Manager, CTU & Director Transport, UT, Chandigarh. In view of the facts & circumstances of the case and in exercise of the powers conferred under Punjab Civil Services (Punishment & Appeal) Rules, 1970, the then Divisional Manager, CTU & Director Transport, U.T. Chandigarh ordered to stop one increment with cumulative effect of Sh. Mohan Singh Conductor No.31 vide order No.3466/ECC/CTU-III/2014 dated 26-11-2014.

On 21.08.2012 Sh. Darshan Singh and Sh. Nirmal Singh, Inspectors reported that on 17.08.2012 Sh. Mohan Singh - Conductor No.31 while performing duty on Bus No.CH-01-G-5040 on route No.39 defrauded ₹ 40/- by not issuing ticket of ₹10/- to the four passengers from Mohali Phase - 7 to 42-52 and 43-53 Chowk. A charge sheet vide Memo No.8874/TA-IV/HO/CTU/2012 dated 25.09.2012 was issued against Sh. Mohan Singh - Conductor No.31. Inquiry was conducted by the Inquiry Officer, CTU, Chandigarh vide which the charges levelled against Sh. Mohan Singh - Conductor No. 31 vide Memo No. 8847/TA-IV/HO/CTU/2012 dated 25.09.2012 stands proved. On 29.10.2014 Sh. Mohan Singh - Conductor No.31 was heard in person by the then Divisional Manager, CTU and Director Transport, U.T. Chandigarh. In view of the facts & circumstances of the case, in exercise of the powers conferred under Punjab Civil Services (Punishment & Appeal) Rules, 1970, the then Divisional Manager, CTU & Director Transport, U.T. Chandigarh ordered to stop two increments with cumulative effect of Sh. Mohan Singh Conductor No.31 vide order No.3467/ECC/CTU-III/2014 dated 26-11-2014.

On 11.07.2012 Sh. Tarlochan Singh and Sh. Hakam Singh, Inspectors reported that on 10.07.2012 Sh. Mohan Singh - Conductor No.31 while performing duty on Bus No.CH-01-G-5045 on route No.39 defrauded ₹ 25/- by not issuing ticket of ₹ 5/- to the five passengers from Mohali Phase - 11 to Industrial Area, Phase - 9, Mohali. A charge-sheet vide Memo No.7425/TA-IV/HO/CTU/2012 dated 17.08.2012 was issued against Sh. Mohan Singh - Conductor No.31. Inquiry was conducted by the Inquiry Officer, CTU, Chandigarh vide which the charges levelled against Sh. Mohan Singh - Conductor No.31 vide Memo No.7425/TA-IV/HO/CTU/2012 dated 17.08.2012 stands proved. On 29.10.2014 Sh. Mohan Singh - Conductor No.31 was heard in person by the then Divisional Manager, CTU and Director Transport, U.T. Chandigarh. In view of the facts & circumstances of the case, in exercise of the powers conferred under Punjab Civil Services (Punishment & Appeal) Rules, 1970, the then Divisional Manager, CTU & Director Transport, U.T. Chandigarh ordered to stop one increment with cumulative effect of Sh. Mohan Singh Conductor No.31 vide order No.3468/ECC/CTU-III/2014 dated 26-11-2014.

There were three different charge-sheets against Sh. Mohan Singh Conductor No.31, which were taken into consideration by the punishing authority during the personal hearing of Sh. Mohan Singh - Conductor No.31 on 29.10.2014. After taking due consideration of the facts & circumstances of each charge-sheet three different punishment orders were given to Sh. Mohan Singh - Conductor No. 31 vide different orders No.3466/ECC/CTU-III/2014, No.3467/ECC/CTU-III/2014 and No.3468/ECC/CTU-III/2014 all dated 26-11-2014. Being aggrieved with these punishment orders, Sh. Mohan Singh - Conductor No.31 filed an appeal before the appellate authority i.e. The Secretary Transport, U.T. Chandigarh which was dismissed by the then Secretary Transport vide order dated 12.12.2019 being devoid of any merit.

6. Further in para-wise reply, it is stated that a charge sheet was issued to the workman vide No.8874/TA-IV/HO/CTU/2012 dated 25.09.2012 for the fraud of ₹ 40/- by not issuing ticket to four passengers from Mohali Phase - 7 to 42-52 and 43-53 chowk. The workman admitted his fault in the presence of the passengers and gave un-punched tickets to the checking staff and put his signatures on the waybill note. The workman even confessed his guilt during the departmental inquiry by tendering confession in writing. Hence, the charges stood proved against the workman. The inquiry was conducted in proper & fair manner by taking into consideration the principles of natural justice. The workman was given due opportunity to defend his case. But the workman confessed his guilt in front of the Inquiry Officer by tendering a written statement. The confessional statement was voluntarily made by the workman that he admits his guilt and requested to take a lenient view against him. The confessional statement submitted by the workman was not conditionally subject to imposing minor punishment on the workman. It is wrong to allege that the punishing authority assured to leave him with minor punishment order. The workman had voluntarily submitted his confession about his guilt in the respective charge-sheets to the Inquiry Officers. The workman further showed his willingness not to face the departmental inquiry and requested to the respective Inquiry Officer to taken lenient view against him. On the basis of these confessional statements, the respective charges were proved by the respective Inquiry Officer. The punishment was awarded by the competent Punishing Authority by taking due consideration of the fact and the circumstances of each charge-sheet. The Appellate Authority after going through the record of each charge sheet, confessional statement of the workman, found no merit in the case to interfere with the orders dated 29.10.2014 / 26.11.2014 of Punishing Authority, hence dismissed the appeal filed by the workman. The punishment orders dated 29.10.2014 / 26.11.2014 are well reasoned and speaking in its nature and quite liable to be upheld in the eyes of law and the same have been passed after adopting the due procedure of law and the same does not deserve to be set aside on the grounds alleged by the workman. Further similar stand is taken as taken in the preliminary submissions. It is further stated that the only requirement of law is that the allegation against the delinquent official should be established by such evidence acting upon which reasonable person acting reasonable and with objectivity, arrived at a finding upholding the charges against the delinquent official. The Court exercising jurisdiction of judicial review would not interfere with the findings of fact arrived at in the departmental inquiry proceedings except in a case of malafide or perversity. The Court cannot embark upon re-appreciating the evidence weighing the same like an appellate authority. In this connection, reference may be made to the decision of Hon'ble Supreme Court in **Bank of India & Another Versus Degala Suryanarayana, AIR 1991 SC 2407**. Rest of the contents of the demand notice-cum-statement claim are denied as wrong and prayer is made that the present industrial dispute reference may be dismissed.

7. Replication not filed. From the pleadings of the parties, following issues were framed vide order dated 13.09.2022 :-

1. Whether the demand raised in the demand notice dated 07.03.2020 by the workers' union is genuine and justified ? If so, to what effect and to what relief the workers' union / workman is entitled to, if any ? OPW
2. Whether the punishment orders are passed after adopting the due procedure ? OPM
3. Relief.

8. In evidence, the workman Mohan Singh examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A' along with documents Exhibit 'W1' to Exhibit 'W12'.

Exhibit 'W1' is photocopy of punishment order dated 29.10.2014 bearing Endorsement No.3466/ECC/CTU-III/2014 dated 26.11.2014.

Exhibit 'W2' is photocopy of punishment order dated 29.10.2014 bearing Endorsement No.3467/ECC/CTU-III/2014 dated 26.11.2014.

Exhibit 'W3' is photocopy of punishment order dated 29.10.2014 bearing Endorsement No.3468/ECC/CTU-III/2014 dated 26.11.2014.

Exhibit 'W4' is copy of appeal dated 23.04.2018 against punishment order dated 29.10.2014 bearing Endorsement No.3466/ECC/CTU-III/2014 dated 26.11.2014 filed by Mohan Singh

Exhibit 'W5' is copy of appeal dated 23.04.2018 against punishment order dated 29.10.2014 bearing Endorsement No.3467/ECC/CTU-III/2014 dated 26.11.2014 filed by Mohan Singh.

Exhibit 'W6' is copy of appeal dated 23.04.2018 against punishment order dated 29.10.2014 bearing Endorsement No.3468/ECC/CTU-III/2014 dated 26.11.2014 filed by Mohan Singh.

Exhibit 'W7' is order dated Nil bearing Endorsement No.11/2018-(1)-CTU(R&J)/2019/20003 dated 12.12.2019 passed by the appellate authority in Appeal No.11/18-(1)-CTU.

Exhibit 'W8' is order dated Nil bearing Endorsement No.11/2018-(2)-CTU(R&J)/2019/20002 dated 12.12.2019 passed by the appellate authority in Appeal No.11/18-(2)-CTU.

Exhibit 'W9' is order dated Nil bearing Endorsement No.11/2018-(3)-CTU(R&J)/2019/20001 dated 12.12.2019 passed by the appellate authority in Appeal No.11/18-(3)-CTU.

Exhibit 'W10' is photocopy of order bearing No.884/ECM/CTU/IIO/2001 dated 13.12.2001 passed by Divisional Manager, CTU & Director Transport, U.T. Chandigarh.

Exhibit 'W11' is photocopy of order bearing No.2202/CI/ADM(T&C)/CTU/99 dated 02.06.1999 passed by the Director Transport, U.T. Chandigarh.

Exhibit 'W12' is photocopy of order bearing No.500/TM/TA/CTU/87 dated 03.03.1987 passed by the General Manager, CTU, Chandigarh.

9. On 30.08.2023 Learned Representative for the workers' union closed evidence of the workers' union in affirmative.

10. On the other hand, the management examined MW1 Mrs. Baljit Kaur - Senior Assistant, Office of CTU, Chandigarh, who tendered her affidavit Exhibit 'MW1/A' along with copies of documents Exhibit 'MW1/1' to Exhibit 'MW1/3'.

Exhibit 'MW1/1' is letter dated 27.08.2012.

Exhibit 'MW1/2' is letter dated 04.09.2012.

Exhibit 'MW1/3' is letter dated 31.09.2014.

11. On 16.10.2023 Learned Law Officer closed oral evidence on behalf of the management. On 09.01.2024 Learned Law Officer closed documentary evidence on behalf of the management.

12. I have heard the arguments of Learned Representative for the workers' union and Learned Law Officer for the management and perused the judicial file. My issue-wise finding are as below :-

Issues No. 1 & 2 :

13. Both these issues are taken up together being interconnected and in order to avoid repetition of discussion.

14. Onus to prove issue No. 1 is on the workman / workers' union and onus to prove issue No.2 on the management.

15. Under these issues, the workman Mohan Singh examined himself as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto, which are not reproduced here for sake of brevity. AW1 supported his oral version with the documents Exhibit 'W1' to Exhibit 'W12'.

16. On the other hand, the management examined MW1 Mrs. Baljit Kaur - Senior Assistant, CTU, who tendered her affidavit Exhibit 'MW1/A' wherein she deposed the entire material contents of the written statement, which are not reproduced in order to avoid repetition. MW1 supported her oral version with documents with documents Exhibit 'MW1/1' to Exhibit 'MW1/3'.

17. From the oral as well as documentary evidence led by the parties, it comes out that Mohan Singh

was employed as Conductor No.31 with CTU, Chandigarh; who is now Sub-Inspector with CTU, Chandigarh. On 27.06.2012 Mohan Singh - Conductor No.31 was performing duty on bus No.CH-01-G-5045 on Route No.39. On that day the checking staff of CTU consisting of S/Shri Tarlochan Singh, Hakam Singh and Gurwinder Singh, Inspectors checked the bus and found that Mohan Singh - Conductor has not issued tickets of ₹ 5/- each to five passengers from Phase 11 Mohali to Industrial Area, Phase 9, Mohali. In this regard the checking staff made report on 28.06.2012. The checking staff alleged that Mohan Singh - Conductor No.31 by not issuing tickets of ₹ 5/- to five passengers have defrauded the department to the tune of ₹ 25/-. In this matter Mohan Singh - Conductor was charge-sheeted vide Memo No.6822/TA-IV/HO/CTU//2012 dated 01.08.2012.

18. Again on 10.07.2012 Mohan Singh - Conductor No.31 was performing duty on bus No.CH-01-G-5045 on Route No.39. On that day the checking staff of CTU consisting of S/Shri Tarlochan Singh and Hakam Singh, Inspectors checked the bus and found that Mohan Singh - Conductor has not issued tickets of ₹ 5/- each to five passengers from Phase 11 Mohali to Industrial Area, Phase 9, Mohali. In this regard the checking staff made report on 11.07.2012. The checking staff alleged that Mohan Singh - Conductor No.31 by not issuing tickets of ₹ 5/- to five passengers have defrauded the department to the tune of ₹ 25/-. In this matter Mohan Singh - Conductor was charge-sheeted vide Memo No.7425/TA-IV/HO/CTU//2012 dated 17.08.2012.

19. Again on 17.08.2012 Mohan Singh - Conductor No.31 was performing duty on bus No.CH-01-G-5040 on Route No. 39. On that day the checking staff of CTU consisting of S/Shri Darshan Singh and Nirmal Singh, Inspectors checked the bus and found that Mohan Singh - Conductor has not issued tickets of ₹ 10/- each to four passengers from Phase 7 Mohali to 42-52 and 43-53 Chowk. In this regard the checking staff made report on 21.08.2012. The checking staff alleged that Mohan Singh - Conductor No.31 by not issuing tickets of ₹ 10/- to four passengers have defrauded the department to the tune of ₹ 40/-. In this matter Mohan Singh - Conductor was charge-sheeted vide Memo No.8874/TA-IV/HO/CTU//2012 dated 25.09.2012.

20. The management has alleged that with regard to report dated 28.06.2012 of checking staff, the Memo No. 6822/TA-IV/HO/CTU//2012 dated 01.08.2012 was issued to Mohan Singh - Conductor No. 31. The competent authority ordered to conduct a regular departmental inquiry by appointing the Inquiry Officer. The management has alleged that during inquiry proceedings Mohan Singh - C-31 filed written reply to Memo No. 6822 dated 01.08.2012 / Exhibit 'MW1/1'. The translated version from Punjabi to English language of reply Exhibit 'MW1/1' is as below :-

"It is requested that regarding allegation dated 27/06 of Rs.25/- on me, I admit my mistake and do not want to get conducted the inquiry. I am giving writing with my own volition. My case may be decided by taking lenient view."

21. The punishing authority Shri T.P.S. Phoolka, PCS, Divisional Manager, CTU & Director Transport, U.T. Chandigarh, passed order dated 29.10.2014 / Endorsement No.3466 dated 26.11.2014 / Exhibit 'W1'. The relevant of portion of order Exhibit 'W1' is reproduced as below :-

"And whereas, Sh. Mohan Singh, Conductor No. 31 has not submitted his reply to the charge sheet and the competent authority in order to give natural justice ordered to conduct a regular departmental inquiry by appointing the Enquiry Officer. The Enquiry Officer submitted his enquiry report wherein he held that charges levelled against the official vide Memo 6822/TA-IV/HO/CTU/2012 dated 01.08.2012 stand proved."

On 29.10.2014, Sh. Mohan Singh, Conductor No.31 was heard in person by the Undersigned in connection with Memo No.6822 dated 01.08.2012. He was confronted with material facts on record to say something by way of his explanation. He was listened to carefully. During personal hearing he did not say anything more than what he had said earlier. He further requested that a lenient view may be taken against him."

Now, therefore, in view of the facts and circumstances of the case and in exercise of the powers conferred under Punjab Civil Services (Punishment and Appeal) Rules, 1970, the undersigned does hereby order to stop one increment with cumulative effect of Sh. Mohan Singh, C No.31."

22. Mohan Singh - Conductor No.31 filed appeal / Exhibit 'W4' against punishment order dated 29.10.2014 / Endorsement No.3466 dated 26.11.2014, which was dismissed by the appellate authority Dr. Ajay Kumar Singla, IAS, Secretary Transport, Chandigarh Administration vide order bearing Endorsement No.11/2018-(2)-CTU(R&J)/2019-20002 dated 12.12.2019 / Exhibit 'W8'. The relevant portion of order Exhibit 'W8' is reproduced as below :-

"During the course of hearing, the appellant did not able to produce any concrete evidence or argument which can show that the Enquiry was not conducted in proper manner and further had nothing to say except a request to take sympathetic and lenient view in his case. On the contrary, the representatives on behalf of the C.T.U. produced the service record of the delinquent official whereby it revealed that several punishments had already been imposed upon the appellant on ground of several misconducts. In reply to this, the appellant failed to produce any concrete evidence which can either controvert the findings of the authority or support the contention of the appellant.

On hearing the appellant in person and upon perusal of record, it reveals that several punishtrial had already been imposed upon him on several occasions on account of his misconduct. From the perusal of the enquiry report, it reveals that the appellant himself showed his unwillingness to face the departmental enquiry and now also he has nothing to say in support of either of his contentions as raised in his appeal. Thus, it is apparent on the face of record that the competent authority had already taken lenient view while passing the impugned order dated 29.10.2014 and no further leniency deserves to be taken in the instant case. Hence, I do not find any infirmity in the order dated 29.10.2014 passed by the Director Transport, U.T. Chandigarh (CTU).

Consequently, the present appeal is dismissed being devoid of any merit. The order was kept reserved and is being released today."

23. The management has alleged that with regard to report dated 11.07.2012 of checking staff, Memo No.7725/TA-IV/HO/CTU//2012 dated 17.08.2012 was issued to Mohan Singh - Conductor No.31. The competent authority ordered to conduct a regular departmental inquiry by appointing the Inquiry Officer. The management has alleged that during inquiry proceedings Mohan Singh - C-31 filed written reply to Memo No.7725 dated 17.08.2012 / Exhibit 'MW1/2'. The translated version from Punjabi to English language of reply Exhibit 'MW1/2' is as below :-

"It is requested that regarding allegation dated 10/7/12 of Rs.25/- on me, I admit my mistake and do not want to get conducted the inquiry. I am giving writing with my own volition. My case may be decided by taking lenient view."

24. The punishing authority Shri T.P.S. Phoolka, PCS, Divisional Manager, CTU & Director Transport, U.T. Chandigarh, passed order dated 29.10.2014 / Endorsement No.3468 dated 26.11.2014 / Exhibit 'W3'. The relevant of portion of order Exhibit 'W3' is reproduced as below :-

"And whereas, Sh. Mohan Singh, Conductor No.31 has not submitted his reply to the charge sheet and the competent authority in order to give natural justice ordered to conduct a regular departmental enquiry by appointing the Enquiry Officer. The Enquiry Officer submitted his report wherein he held that charges levelled against the official vide Memo 7275/TA-IV/HO/CTU//2012 dated 17.08.2012 stand proved.

On 29.10.2014 Sh. Mohan Singh, Conductor No.31 was heard in person by the Undersigned in connection with Memo No.5668 dated 17.05.2013. He was confronted with material facts on record and charges leveled against him. He was given an opportunity with regard to say something by way of his explanation. He was listened to carefully. During personal hearing he did not say anything more than what he had said earlier. He further requested that a lenient view may be taken against him.

Now, therefore, in view of the facts and circumstances of the case and in exercise of the powers conferred under Punjab Civil Services (Punishment and Appeal) Rules, 1970, the undersigned does hereby order to stop one increment with cumulative effect of Sh. Mohan Singh, C No.31."

25. Mohan Singh - Conductor No.31 filed appeal / Exhibit 'W6' against punishment order dated 29.10.2014 / Endorsement No.3468 dated 26.11.2014, which was dismissed by the appellate authority Dr. Ajay Kumar Singla, IAS, Secretary Transport, Chandigarh Administration vide order Endorsement No.11/2018-(3)-CTU(R&J)/2019-20001 dated 12.12.2019 / Exhibit 'W9'. The relevant portion of order Exhibit 'W9' is reproduced as below :-

"During the course of hearing, the appellant did not able to produce any concrete evidence or argument which can show that the Enquiry was not conducted in proper manner and further had nothing to say except a request to take sympathetic and lenient view in his case. On the contrary, the representatives on behalf of the C.T.U. produced the service record of the delinquent official whereby it revealed that several punishments had already been imposed upon the appellant on ground of several misconducts. In reply to this, the appellant failed to produce any concrete evidence which can either controvert the findings of the authority or support the contention of the appellant.

On hearing the appellant in person and upon perusal of record, it reveals that several punishments had already been imposed upon him on several occasions on account of his misconduct. From the perusal of the enquiry report, it reveals that the appellant himself showed his unwillingness to face the departmental enquiry and now also he has nothing to say in support of either of his contentions as raised in his appeal. Thus, it is apparent on the face of record that the competent authority had already taken lenient view while passing the impugned order dated 29.10.2014 and no further leniency deserves to be taken in the instant case. Hence, I do not find any infirmity in the order dated 29.10.2014 passed by the Director Transport, U.T. Chandigarh (CTU).

Consequently, the present appeal is dismissed being devoid of any merit. The order was kept reserved and is being released today."

26. The management has alleged that with regard to report dated 21.08.2012 of checking staff, the Memo No.8874/TA-IV/HO/CTU//2012 dated 25.09.2012 was issued to Mohan Singh - Conductor No.31. The competent authority ordered to conduct a regular departmental inquiry by appointing the Inquiry Officer. The management has alleged that during inquiry proceedings Mohan Singh - C-31 filed written reply dated 31.03.2014 to Memo No.8874 dated 25.09.2012 / Exhibit 'MW1/3'. The translated version from Punjabi to English language of reply Exhibit 'MW1/3' is as below :-

"It is requested that with regard to report of Rs.40/-, I admit my mistake. Kindly I may be given lesser punishment. My case may be filed. I shall be thankful to you. I do not want to get conducted the inquiry."

27. The punishing authority Shri T.P.S. Phoolka, PCS, Divisional Manager, CTU & Director Transport, U.T. Chandigarh, passed order dated 29.10.2014 / Endorsement No.3467 dated 26.11.2014 / Exhibit 'W2'. The relevant of portion of order Exhibit 'W2' is reproduced as below :-

"And whereas, Sh. Mohan Singh, Conductor No.31 has not submitted his reply to the charge sheet and the competent authority in order to give natural justice ordered to conduct

a regular departmental enquiry by appointing the Enquiry Officer. The Enquiry Officer submitted his report wherein he held that charges levelled against the official vide Memo 8874/TA-IV/HO/CTU//2012 dated 25.09.2012 stand proved.

On 29.10.2014, Sh. Mohan Singh, Conductor No.31 was heard in person by the Undersigned in connection with Memo No.4905 dated 06.05.2014. He was confronted with material facts on record and charges levelled against him. He was given an opportunity with regard to say something by way of his explanation. He was listened to carefully. During personal hearing he did not say anything more than what he had said earlier. He further requested that a lenient view may be taken against him.

Now therefore in view of the facts and circumstances of the case and in exercise of the powers conferred under Punjab Civil Services (Punishment and Appeal) Rules, 1970, the undersigned does hereby order to stop two increments with cumulative effect of Sh. Mohan Singh, C No.31."

28. Mohan Singh - Conductor No.31 filed appeal / Exhibit 'W5' against punishment order dated 29.10.2014 / Endorsement No.3467 dated 26.11.2014, which was dismissed by the appellate authority Dr. Ajay Kumar Singla, IAS, Secretary Transport, Chandigarh Administration vide order Endorsement No.11/2018-(1)-CTU(R&J)/2019-20003 dated 12.12.2019 / Exhibit 'W7'. The relevant portion of order Exhibit 'W7' is reproduced as below :-

"During the course of hearing, the appellant did not able to produce any concrete evidence or argument which can show that the Enquiry was not conducted in proper manner and further had nothing to say except a request to take sympathetic and lenient view in his case. On the contrary, the representatives on behalf of the C.T.U. produced the service record of the delinquent official whereby it revealed that several punishments had already been imposed upon the appellant on ground of several misconducts. In reply to this, the appellant failed to produce any concrete evidence which can either controvert the findings of the authority or support the contention of the appellant.

On hearing the appellant in person and upon perusal of record, it reveals that several punishments had already been imposed upon him on several occasions on account of his misconduct. From the perusal of the enquiry report, it reveals that the appellant himself showed his unwillingness to face the departmental enquiry and now also he has nothing to say in support of either of his contentions as raised in his appeal. Thus, it is apparent on the face of record that the competent authority had already taken lenient view while passing the impugned order dated 29.10.2014 and no further leniency deserves to be taken in the instant case. Hence, I do not find any infirmity in the order dated 29.10.2014 passed by the Director Transport, U.T. Chandigarh (CTU).

Consequently, the present appeal is dismissed being devoid of any merit. The order was kept reserved and is being released today."

29. Learned Representative for the workman argued that in the matter of departmental inquiry of charge sheet Memo No.6822 dated 01.08.2012, charge sheet memo No.7425 dated 17.08.2012 and charge sheet Memo No.8874 dated 25.09.2012, the punishment orders Exhibit 'W1', Exhibit 'W3' and Exhibit 'W2' are passed on the basis of alleged admission statements Exhibit 'MW1/1' to Exhibit 'MW1/3' respectively of the workman Mohan Singh - C-31. The admission statements Exhibit 'MW1/1' to Exhibit 'MW1/3' were made by the workman / delinquent official before the Inquiry Officer as the Punishing Authority convinced him to admit the charge and if he does so, then it was assured by the punishing authority the workman / delinquent official will be awarded minor punishment. Therefore, the admission statements were not volunteer but the

same were given on the assurance of the punishing authority with the hope that the workman will be left with minor punishment. The Inquiry Officer did not examine any witness to prove the charges and there was no material on record, despite that the Inquiry Officer submitted his report against the workman / delinquent official. In this manner, the Inquiry Officer has not conducted the inquiry proceedings in fair & proper manner and failed to follow the principles of natural justice. Learned Representative for the workers' union referred cross-examination of MW1 wherein she has stated that it is correct that no statement of Inspectors has been recorded during the course of inquiry proceedings. MW1 admitted as correct that no way bill was produced before the Inquiry Officer in the inquiry proceedings. Learned Representative for the workers' union referred the judgment of Hon'ble High Court of Gujrat in **Natvarbhai S. Makwan Versus Union Bank of India & Others reported in 1985(2) LLJ 296**, wherein it has been held as under :-

"Counsel for the petitioner contended that the so-called admission or confession cannot be made the sole basis of conviction and punishment as is sought to be done by the respondent-bank. In his submission, even though there may be clear-cut admission and / or confession about certain alleged misconduct, no conviction and punishment can be based on such admission alone, if there is no evidence to prove the factum of misconduct. In this case, it is an undisputed position that there is no evidence with regard to the allegations that Shri R.J. Arya, the Union Leader was requested to threaten and for intimidate Shri J.K. Shah, Acting-In-charge of the Staff Training Centre, Ahmedabad. In the departmental proceedings Shri R. J. Arya has not been examined. No other evidence has been led in this behalf. The Inquiry Officer has submitted the report on the basis of admission alone. It is contended that admission made by the delinquent cannot be made the sole basis for conviction and imposition of punishment. Contended that, if a person is charged with the misconduct of theft of bank money, and if confesses the misconduct, can such a person be convicted and punished only on the basis of his confession ? If so, can the possibility be ruled out that there may not be an occurrence of theft at all ? Therefore, in his submission first of all the factum of the offence or that of misconduct should be proved. After the misconduct is established, either by documentary evidence or by oral evidence the further question as to whether the employee concerned is guilty of the misconduct charged or not may be required to be examined. At this stage, if the employee concerned makes admission then further evidence may not be necessary. In a given case, where the delinquent officer / employee makes admission immediately after the charge-sheet is served, even then the departmental authorities would not be relieved of their duty to establish the factum of offence or the facts constituting the misconduct by producing oral or documentary evidence. This may be proven even by an affidavit of certain persons.

There is much force in the contention and arguments advanced by the counsel for the petitioner. It may happen that the Bank authorities may bonafide believe that there is theft or misappropriation of bank money. The delinquent official charged with misconduct of theft or misappropriation may be induced to confess the guilt for one reason or another - say informal understanding that he shall be dealt with leniently. Or that he himself might have been loss in the jungle of accounts book and he himself may not be sure whether he has committed any mistake or not. He may be on the verge of retirement and may be desirous to put an end to any inquiry. He may not have resources to fight the case put against him. For any of these reasons or say on account of mere foolishness, he may confess the mis-conduct charged against him and be punished for the same without there being any evidence or proof of the same i.e. theft / misappropriation. Later on, in audit it

may be discovered that there was only accounting mistake and no theft / misappropriation whatsoever. To avoid such possibility, it is always necessary that the factum of misconduct be established. Moreover, disciplinary proceedings by the department are in the nature of quasi-criminal proceedings much more so from the view point of consequences of such proceedings. An employee may be visited with penalty of removal or dismissal from service which would be almost equivalent to economic death sentence. Therefore, proof of the facts constituting misconduct has got to be emphasized. Ordinarily, admission alone of the delinquent officer cannot be regarded as sufficient proof of misconduct as well as the facts constituting misconduct."

30. On the other hand, Learned Law Officer for the management argued that admission statements Exhibit 'MW1/1' to Exhibit 'MW1/3' are given in writing by the workman himself. Once the workman has admitted his guilt, there remains no necessity to examine witnesses during the inquiry proceedings. Three charge-sheets served to the workman speak volumes of the fact that he is habitual offender and does not deserve any leniency. The Punishing Authority has given personal hearing to the workman on 29.10.2014. As proved from orders of appeals Exhibit 'W7' to Exhibit 'W9', the workman / delinquent official was also given personal hearing by the appellate authority. Therefore, the inquiry proceedings, orders of punishments Exhibit 'W1' to Exhibit 'W3' and orders of appeal Exhibit 'W7' to Exhibit 'W9' are well reasoned speaking orders. There is no violation of rules of natural justice. Moreover, as per the judgment of Hon'ble Supreme Court in **Bank of India & Another Versus Degala Suryanarayana, AIR 1991 SC 2407**; the Court would not interfere with the findings of facts arrived at in the departmental inquiry proceedings except in a case of malafide or perversity. Learned Law Officer contended that in this case the orders under challenge neither malafide nor perverse. To my opinion the law laid down in judgment in AIR 1991 SC 2407 (supra) is well recognized by this Court but the ratio of ruling is not applicable to the facts of the present case. As per the judgment of Hon'ble Supreme Court of India titled as **Kurukshetra University Versus Prithvi Singh, reported in 2018 LLR 371** referred by Learned Representative for the workers' union, which is applicable to the facts of the present case, under Section 11A of the ID Act, if the inquiry is held illegal, then the Industrial Adjudicator has power to interfere in the quantum of punishment in view of gravity of misconduct(s) proved against the workman by reducing the quantum of punishment as it may be assessed.

31. To my opinion, as proved from the documents on record, the sole basis of the punishment order Exhibit 'W1' to Exhibit 'W3' passed against the workman Mohan Singh - C31 is the admission statement Exhibit 'MW1/1' to Exhibit 'MW1/3'. Learned Law Officer failed to controvert the fact that except the aforesaid admission statements, there was no other oral or documentary evidence before the Inquiry Officer. On the basis of report of the Inquiry Officer the punishing authority has passed orders Exhibit 'W1' to Exhibit 'W3'. To such circumstances, the judgment reported in **1985(2) LLJ 296 (supra)** referred by Learned Representative for the workers' union is squarely applicable to the facts of the present case.

32. As per the management the order of punishment Exhibit 'W1' has been passed with regard to charge sheet Memo No.6822 dated 01.08.2012, punishment order Exhibit 'W2' has been passed with regard to charge sheet Memo No.8874 dated 25.09.2012 and punishment order Exhibit 'W3' has been passed with regard to charge sheet Memo No.7425 dated 17.08.2012. The careful scrutiny of the punishment order Exhibit 'W2' would reveal that it relates to charge sheet Memo No.8874 dated 25.09.2012 whereas the punishing authority in its findings mentioned that on 29.10.2014 he has heard Mohan Singh - Conductor No.31 in connection with Memo No.4905 dated 06.05.2014. The said Memo No.4905 dated 06.05.2014 has no connection with any of the charges sheets which are in question in the present case. Likewise, the scrutiny of the punishment order Exhibit 'W3' would reveal that it relates to charge sheet Memo No.7725 dated 17.08.2012 and the punishing authority in its findings mentioned that on 29.10.2014 he has heard Mohan Singh - Conductor No.31 in connection with Memo No.5668 dated 17.05.2013. The said Memo No.7725 dated 17.08.2012

and Memo No.5688 dated 17.05.2013 has no connection with any of the charge sheets in question which bears Memo No.6822 dated 01.08.2012, Memo No.7425 dated 17.08.2012 and Memo No.8874 dated 25.-09.2012. The material contradiction with regard to memo number relied upon by the punishing authority in punishing order Exhibit 'W2' and Exhibit 'W3' would prove that the punishing authority did not apply mind to the charge sheet in question. The memo No.4905 dated 06.05.2014, charge sheet Memo No.7725 dated 17.08.2022 and Memo No.5688 dated 17.05.2013 are not produced on record by the management. The appellate authority upheld the punishment Exhibit 'W2' and Exhibit 'W3' without recording any findings with regard to Memo No.4905 dated 06.05.2014, Memo No.7725 dated 17.08.2022 and Memo No.5688 dated 17.05.2013.

33. In view of the reasons recorded above, the punishment order dated 29.10.2014 / Endorsement No.3466 dated 26.11.2014 / Exhibit 'W1'; dated 29.10.2014 / Endorsement No.3467 dated 26.11.2014 / Exhibit 'W2' & dated 29.10.2014 / Endorsement No.3466 dated 26.11.2014 / Exhibit 'W3' and orders of appeal endorsement No.20003 dated 12.12.2019 / Exhibit 'W7', endorsement No.20002 dated 12.12.2019 / Exhibit 'W8' & endorsement No.20001 dated 12.12.2019 / Exhibit 'W9' are held illegal being passed without adopting the due procedure of proper inquiry and hereby set aside.

34. Accordingly, issue No.1 is decided in favour of the workman / workers' union and against the management and issue No.2 is decided against the management and in favour of the workman / workers' union.

Relief :

35. In the view of foregoing finding on the issues above, this industrial dispute reference is allowed and answered in favour of the workers' union. The punishment orders dated 29.10.2014 / Endorsement No.3466 dated 26.11.2014 / Exhibit 'W1'; dated 29.10.2014 / Endorsement No.3467 dated 26.11.2014 / Exhibit 'W2' & dated 29.10.2014 / Endorsement No.3466 dated 26.11.2014 / Exhibit 'W3' and orders of appeal endorsement No.20003 dated 12.12.2019 / Exhibit 'W7', endorsement No.20002 dated 12.12.2019 / Exhibit 'W8' & endorsement No.20001 dated 12.12.2019 / Exhibit 'W9' are set aside. The management is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this award till its actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . . ,

(JAGDEEP KAUR VIRK)

PRESIDING OFFICER,

Industrial Tribunal & Labour Court,

Union Territory, Chandigarh.

UID No. PB0152.

Dated : 12.01.2024.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 18th March, 2024

No. 13/2/84-HII(2)-2024/4474.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **79/2021** dated **14.12.2023** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

DEEPAK S/O SH. HANS RAJ, H.NO.57, VILLAGE DHAROLI, TEHSIL NARWANA, DISTRICT JIND (HR). (Workman)

AND

1. M/S CHECKMATE SERVICE PVT. LTD., SCF NO. 128, PHASE-3-B2, DISTRICT MOHALI THROUGH ITS MANAGING DIRECTOR.
2. AXIS BANK LTD., AXIS BANK CURRENCY CHEST, SECTOR 34, CHANDIGARH THROUGH ITS BRANCH MANAGER (Management)

AWARD

1. Deepak, workman has presented industrial dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that on 11.06.2016 the claimant-workman was appointed by management No.1 i.e. M/s Checkmate Services Pvt. Ltd., Mohali as Cash Sorter. The claimant-workman was deployed at the workplace of management No.2 i.e. Axis Bank Ltd., Axis Bank Currency Chest, Sector 34, Chandigarh. The claimant-workman remained there in the continuous employment up to 11.02.2021 when his services were illegally & wrongfully terminated by refusing of work. The claimant-workman was drawing ₹ 17,000/- per month as wages at the time of termination. On 12.02.2021 the claimant-workman went to attend his normal duty but he was refused work by management No.2 on the pretext that the management No.1 has asked them to refuse work to the worker. No reason of refusal of work was given to the claimant-workman by both the managements. The refusal of work, which amounts to termination, is retrenchment under Section 2(oo) of the ID Act. The management No.1 has also violated Section 25-F of the ID Act. No charge sheet was issued, no inquiry was held and the claimant-workman was not paid retrenchment compensation at the time of termination. Violation of the same makes the termination void. For his reinstatement the claimant-workman served upon the management a demand notice dated 15.02.2021. The management neither denied the contents of the demand notice nor took the claimant-workman back on duty. The Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh was requested for his intervention. Management No.1 appeared before the Conciliation Officer, U.T. Chandigarh one time only and thereafter he did not appear before the conciliation on any date fixed for settlement. The termination is illegal, wrongful, motivated against the principles of natural justice and unfair labour practice. The claimant-workman remained unemployed during the period i.e. from the date of termination to till date. Prayer is made that the claimant-workman be reinstated with continuity of service along with full back wages and without any change in his service condition.

3. On notice, management No.1 contested the claim statement by filing written reply dated 12.11.2022 (filed on 06.12.2022) wherein it is stated that the date of commencement is correct but the answering management did not terminate any employee. It is denied as incorrect that both these managements refused work to the claimant-workman. Since no termination was done, thus retrenchment benefits, charge sheet,

inquiry to be held before termination etc. are not applicable. The employees collectively absented and refused to come to work, the matter was taken up with disciplinary action, Checkmate Security Services have made sufficient representation at Labour Department. The applicant's plea that action of the management is illegal, wrongful, motivated, against the principles of natural justice and unfair labour practice is not acceptable. The claimant-workman's plea of demanding reinstatement with back wages, continuity of service and without any change in service condition etc. is not acceptable. No such intentions and acts were initiated by employer but all outstanding efforts were made to get the employee to work as the company had to face huge losses.

4. Management No.2 contested the claim statement by filing separate written statement dated 01.11.2022 (filed on 01.11.2022) wherein preliminary objection is taken on the ground that the claim statement is not legally maintainable as there is privity of contract between claimant-workman and the answering management and the claimant-workman was never hired by the answering management.

5. On merits, it is denied for want of knowledge that on 11.06.2016 the claimant-workman was appointed as Cash Sorter by management No.1. The answering management had hired the services of management No.1 but appointment and termination of any worker was the sole discretion of management No.1 and the answering management has no role to play in it. The alleged the claimant-workman was not on the roll of bank nor employee of the bank nor even any salary was paid to him by the answering management. No refusal as alleged by the claimant-workman was conveyed by the officials of the answering management. No alleged demand notice was ever served upon the answering management and also no notice was received by the answering management from the office of Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh. The claimant-workman never remained employee or worker of the answering management. Rest of the averments of the claim statement are denied being incorrect and prayer is made that claim statement may be dismissed with cost.

6. The claimant-workman filed rejoinder to the written statement of management No.1 on 17.01.2023 wherein contents of the written statement except admitted facts are denied and averments of claim statement are reiterated. Rejoinder to written statement of management No.2 was not filed.

7. From the pleadings of the parties, following issues were framed vide order dated 20.03.2023 :-

1. Whether the termination of the workman is illegal ? OPW
2. If issue No.1 is proved in affirmative, whether the workman is entitled to reinstatement with continuity of service, full back wages and all other consequential benefits as prayed for ? OPW
3. Whether the claim statement qua management No.2 is not maintainable? OPM (management No. 2)
4. Relief.

8. In evidence, claimant-workman Deepak examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A'. On 08.09.2023 Learned Representative for the claimant-workman closed the evidence in affirmative.

9. On the other hand, management No.2 examined MW1 Amit Rajpal - Senior Manager, Axis Bank, Sector 34, Chandigarh, who tendered his affidavit Exhibit 'MW1/A'.

10. Management No.1 examined MW2 Jaspal Singh - DGM (Banking) of M/s Checkmate Services Pvt. Ltd., Phase 3B-II, SAS Nagar Mohali, who tendered into evidence his affidavit vide Exhibit 'MW2/A' along with notary attested copies of documents Exhibit 'MW2/1' to Exhibit 'MW2/8'.

Exhibit 'MW2/1' is authority letter dated 28.03.2019 in Jaspal Singh issued by the Managing Director & Company Secretary of management No.1.

Exhibit 'MW2/2' is aadhar card of Jaspal Singh.

Exhibit MW2/3' is warning letter dated 12.02.2021 issued to the workman by the authorised signatory of management No.1 through courier

Exhibit 'MW2/3-A' is original receipt of DTDC Courier Agencies.

Exhibit 'MW2/4' is absenteeism letter dated 18.02.2021 for not reporting on duty issued to the workman by the authorised signatory of management No.1 through registered post.

Exhibit 'MW2/4-A' is original postal receipt dated 20.02.2021.

Exhibit 'MW2/5' is letter dated 17.03.2021 for final intimation on not reporting on duty issued to the workman by the authorised signatory of management No.1 through registered post.

Exhibit 'MW2/5-A' is original postal receipt dated 19.03.2021.

Exhibit 'MW2/6' is original undelivered courier envelop bearing remarks 'wrong no'.

Exhibit 'MW2/7' is original undelivered registered letter accompanied with acknowledgment bearing postal endorsement 'refused to receive and returned'.

Exhibit 'MW2/8' is original undelivered registered letter accompanied with acknowledgment bearing postal endorsement 'refused to receive and returned'.

11. On 16.11.2023 Learned Representative for management No.2 closed the evidence on behalf of management No. 2. On 06.12.2023 Shri Baljinder Pal Singh - Representative for management No.1 closed oral evidence. On 14.12.2023 Shri Baljinder Pal Singh - Representative for management No.1 closed documentary evidence.

12. I have heard arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise findings are as below :-

Issue No.1 to 3 :

13. Onus to prove issue No.1 & 2 is on the workman and onus to prove issue No.3 is on management No. 2.

14. Under these issues, claimant-workman Deepak examined himself as his own witness as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto which are not reproduced here for the sake of brevity.

15. Management No.1 has examined MW2 Jaspal Singh - DGM (Banking), who vide his affidavit Exhibit 'MW2/A' deposed that he is working with management No.1 as Deputy General Manager (Banking) with Employee Code EMP/COR006558, Office at SCF 128, Phase 3B-II, SA S Nagar, Mohali from 06.05.2014 and he is personally aware of the facts of this case. Management No.1 is a company registered as per the provisions of the Company's Act, 1956. Management No.1 is engaged in business of providing security services, cash sorter services across the India to its customers on the basis of requirement and as per contract terms and agreement. Contrary to the workman's claim of illegal termination, he submits that the employment of the claimant-workman was not terminated. Due to exigency of work in the other location of management No.1, he as DGM (Banking) transferred the following four employees to their Ahmedabad office as per company's requirement :-

- i) Mr. Joginder Pal S/o Gian Chand, Employee Code EMP/CHD00746
- ii) Mr. Ajay Kumar S/o Ram Dular, Employee Code EMP/CHD00748
- iii) Mr. Suresh Kumar S/o Milap Chand, Employee Code EMP/CHD00749
- iv) Mr. Ravinder S/o Ram Nath, Employee Code EMP/CHD00752

These employees were transferred to their Ahmedabad office. They were given transfer letters given by hand to report to Checkmate, Ahmedabad Office under his instructions (as per company's requirement) on 11.02.2021 through Indian post RPAD. but they refused to accept. These letters were given in person which they refused to accept. They were briefed regarding the transfer, which they refused to accept, return letter with remarks of refusal. The transfer letters were displayed on the notice board of the Axis Bank on same day i.e. on 11.02.2021. On 12.02.2021, he was on leave and was attending function at his home town, when he received a call from Mr. Ritesh Kumar - Branch Manager, Axis Bank, stating that no employee of Checkmate Services had reported for duty and when they and he had tried to contact their employee, they were absent. The claimant-workman stated that they will not come to work and all were not willing to come for duty any more. He informed about the mass absenteeism by the claimant-workman and repeated calls were received from Mr. Ritesh - Branch Manager, Axis Bank for deficiency in services and he would not accept any contract employee who have not come on duty, the bank will not accept such un-authorised absence from their staff as bank work stuck up due to cash sorter not reporting for duty. He kept on calling absentee employees from his phone but his phone was not picked by any of the absent employees for the next 2 days i.e. 12.02.2021 to 14.02.2021. On resuming his office on 15.02.2021, he himself again tried to contact the absconding employees, only Mr. Ravi Kumar, EMP/CHD05592 and Mr. Pankaj Kataria, EMP/CHD/03936 picked the call and agreed to come to Mohali Office SCF 128, Phase 3B-II, SAS Nagar Mohali. On next day i.e. 16.02.2021 he himself tried to convince both the absconded employees to resume their duties as the bank officials were putting lot of pressure and the work stoppage had very negative impact on the bank services and their reputation and high penalty clause in the agreement. Both the employees Mr. Ravi Kumar and Mr. Pankaj Kataria were ready to understand and joined the duties but stated that other fellow employees had threatened them not to join the duty. Meanwhile they have appointed new staff in place of absconded employees to fill the bank requirement and their repetition as service provider as well to avoid high penalty of non-providing contractual staff as per agreement. They have also approached the absconded staff to join duty at the other place. They have requirement at Ahmedabad, for that they had sent the letter through RP/AD post letter dated 11.02.2021 as well sent the absenteeism letters-cum-not reporting on duty letter on 18.02.2021 and final letter on 17.03.2021 to the claimant-workman to join duty as his services has not been terminated nor any violation of his appointment services conditions. He asserts that the management has never terminated the services of the claimant-workman. On the contrary the management has provided multiple opportunities to the claimant-workman to re-join duty even after a mass absconding incident incurred. The claimant-workman however failed to respond or re-join and instead engaged in mass absconding without any prior intimation. This action appears to be an attempt to harass both the managements to coercive tactics by the claimant-workman. The management remains willing to offer employment as there has been no formal termination of services. Consequently, there is no basis for claims related to back wages or any other form of compensation, given that the service has not been terminated. MW2 supported his oral version with documents Exhibit 'MW2/1' to Exhibit 'MW2/8'.

16. The management No.2 examined MW1 Amit Raj Pal - Senior Manager, Axis Bank, who vide his affidavit Exhibit 'MW1/A' wherein he deposed that the present alleged claim filed by the claimant against management No.2 is legally maintainable as there is no privity of contract between claimant and management No.2 and the claimant was never hired by management No.2. Management No.2 had hired the services of management No.1 but the appointment and termination of any worker was the sole discretion of management No.1. Management No.2 had no role to play in it. The alleged claimant was not on the roll of the bank, nor employee of the bank nor even any salary was paid to him by management No.2. No notice as alleged was ever served upon management No.2 and also no notice was received by management No.2 from the office of Additional Labour Commissioner-cum-Conciliation officer, U.T. Chandigarh. The claimant never remained employee or worker of management No.2.

17. From the oral as well as documentary evidence led by the parties it comes out that undisputedly the claimant-workman was appointed on 11.06.2016 as Cash Sorter by management No.1 and was deployed at

the work place of management No.2. In this regard, AW1 when to put to cross-examination by management No.2 stated that Axis Bank / management No.2 did not issue him any appointment letter and termination letter / order. He was deployed with the Axis Bank / management No.2 by M/s Checkmate i.e. management No.1. MW1 (witness of management No.2) when to put to cross-examination by the workman admitted as correct that the Axis Bank has contract with the Checkmate Services for providing the manpower. MW1 admitted as correct that the Checkmate Services provided about 15 workers including the claimant of the present case for deployment with Chandigarh Branch of Axis Bank. MW1 stated that bank was not maintaining the attendance of contractual workers. The supervisor of Checkmate was maintaining their attendance. The bank had not been supervising the disbursement of wages and provident fund etc. of the contractual workers. MW2 Jaspal Singh (witness of management No.1) when to put cross-examination by the workman stated that the agreement of management No.1 with the Axis Bank Ltd. / management No.2 was at central level and there was no local agreement. Under the said agreement, management No.1 provided 18 workers to management No.2 around year 2016. From the above-mentioned version of AW1, MW1 and MW2 it is duly established on record that management No.1 i.e. M/s Checkmate Services Pvt. Ltd. is service provider, who under the contract has provided security services and Cash Sorter services to management No.2 i.e. Axis Bank, Sector 34, Chandigarh and the claimant-workman was deployed by the management No.1 at the work place of management No.2 as a Cash Sorter. Since management No.1 maintained the record of attendance and supervision of work of claimant-workman through its Supervisor, thus the claimant-workman was under the direct employment of management No.1 and was a contractual worker deployed with management No.2. There is no direct relationship of employer-employee between management No.2 and claimant-workman. Since management No.2 has hired the services of claimant-workman from its service provider i.e. management No.1, therefore, management No.2 was necessary party, being principal employer, and the claim qua management No.2 is duly maintainable.

18. Admittedly, the authority to appoint, transfer and terminate the contractual employee (herein claimant-workman) was with the service provider i.e. management No.1. Learned Representative for the claimant-workman argued that the claimant-workman remained in continuous employment of the management No.1 from the date of appointment i.e. 11.06.2016 up to 11.02.2021, thus completed 240 days of continuous service in 12 calendar months preceding termination of his services (service being verbally terminated on 12.02.2021). The claimant-workman has alleged that his last drawn wages were ₹17,000/- per month. In this regard MW2 (witness of management No.1) was put to cross-examination by workman stated that there is no dispute with regard to the date of appointment, amount of monthly salary and the date of dispensing with of their services. MW2 further stated that all the workers including the workman had continuously worked for more than 240 days in 12 calendar months preceding their absence from duty.

19. Management No.1 has taken the plea that 15 contractual workers were deployed with management No.2. On 11.02.2021, out of 15 contractual workers, 4 workers namely Ravinder, Joginder Pal, Suresh Kumar and Ajay Kumar were transferred to Ahmedabad. 4 workers who were transferred refused to accept the transfer letter and refused to join at Ahmedabad. The transfer-cum-movement order was also affixed on the notice board of management No.2 i.e. Axis Bank Limited. In order to put pressure upon the management No.1 to cancel the transfer order of four employees all 15 contractual workers collectively absented from duty w.e.f. 12.02.2021. After extensive follow-ups, 2 workers returned to duty with the same employment terms & conditions whereas the remaining 13 including the workman of the present case did not resume duty. It is further argued by Learned Representative for management No.1 that M/s Checkmate Service Pvt. Ltd. has not terminated the service of any of the workman in any manner. Management No.1 has followed due procedure issuing absenteeism letters and reminders, emphasising the company's intent for workman to resume duty but he refused to receive. Management No.1 also issued warning letter dated 12.02.2021 / Exhibit 'MW2/3' through courier vide receipt Exhibit 'MW2/3A', issued another absenteeism letter dated 18.02.2021 / Exhibit

'MW2/4' vide postal receipt Exhibit 'MW2/4A' and final intimation for not reporting on duty vide letter dated 17.03.2021 Exhibit 'MW2/5' through registered post vide Exhibit 'MW2/5A'. Despite issuance of various letters, the claimant-workman did not join back the duty, thus, the claimant-workman himself abandoned the job, though his services were never terminated by management No.1. The workman failed to report to his duty at the work place without any prior notice or explanation which is a clear violation of company's policy and established work expectations. The employer has the inherent right to manage its work force including making decisions regarding re-location. Management No.1 has acted in accordance with its established policies and procedures which were communicated to all the employees by all means to join duty.

20. On the other hand, Learned Representative for the workman contended that no letter / letters as alleged by management No.1 were ever received by the claimant-workman. There is nothing on record to show that the letters allegedly issued through courier or registered post were actually delivered to the claimant-workman. In the present case, there is no dispute with regard to the date of appointment, date of dispensing with the services and monthly salary of the workman. As proved from the cross-examination of MW2 Jaspal Singh (witness of management No.1), the workman had continuously worked for more than 240 days in 12 calendar months preceding his alleged absence from duty, the claimant-workman fulfills the requirement of continuous service as defined in Section 25-B of the ID Act. Once the workman is covered under Section 25-B of the ID Act, then the provision of Section 25-F stands attracted. For better appreciation Section 25-F of the ID Act is reproduced as below :-

"25F. Conditions precedent to retrenchment of workmen.-No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;*
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and*
- (c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette]."*

21. Section 25-F of the ID Act lays down certain conditions which are precedent to retrenchment of workman. In the present case, the management No.1 has taken the plea that the claimant-workman absented from duty w.e.f. 12.02.2021 in protest to the transfer order of co-workers from Chandigarh to Ahmedabad. Moreover, the plea taken by the management No.1 during its evidence that the workman absented in protest to transfer order of the co-worker and to pressurize the management No.1 to withdraw the transfer order of the co-workers is beyond pleadings. The written statement finds no reference of any alleged transfer order of any of the workmen deployed with the Axis Bank. In this regard MW2 Jaspal Singh in his cross-examination stated that in written reply filed by management No.1 to the claim statement, it is nowhere mentioned that the worker was transferred from Chandigarh to some other place. Besides, the management has failed to prove into evidence the transfer order of the co-workers.

22. As far as the contention raised by Learned Representative for the claimant-workman that no letter allegedly issued by the management No.1 was served to the workman, is concerned, AW1 when put to cross-examination by management No.1 stated that he has not received any letter from the management No.1. As per the claim statement the complete address of the claimant-workman is House No.57, Village Dharoli, Tehsil Narwana, District Jind (Haryana). Warning letter dated 12.02.2021 / Exhibit 'MW2/3' issued through courier vide receipt Exhibit 'MW2/3A' reveals that it was issued on the address of village Dharoli, Post Office

& Tehsil Narwana, District Jind (Haryana). Similar address of workman is mentioned on registered letter Exhibit 'MW2/6' bearing postal receipt dated 19.03.2021, Exhibit 'MW2/7' bearing postal receipt dated 20.02.2021 and courier Exhibit 'MW2/8' bearing receipt dated 18.06.2021. The address of the workman mentioned on Exhibit 'MW2/5' to Exhibit 'MW2/8' is incomplete as the house number is not mentioned over the same. Although registered post Exhibit 'MW2/6' and Exhibit 'MW2/7' are received back with the postal endorsement of refusal but the courier issued vide Exhibit 'MW2/8' is received back with the endorsement of wrong number. There is no delivery report of warning letter dated 12.02.2021 / Exhibit 'MW2/3' issued through courier. Under the circumstances, it cannot be said that the above said letters were delivered to the workman. If for the sake of arguments, it is assumed that letters of absenteeism or warning letter were served to the workman, in that situation also if the workman fails to report on duty, the management No.1 / employer was required to initiate the disciplinary proceedings against the workman. But the management No.1 / employer did not initiate any kind of disciplinary proceedings against the workman either by issuing show cause notice or charge sheet. Further, management No.1 in cross-examination of claimant-workman / AW1 did not put his postal / correspondence address to him. Therefore, oral version of MW2 (his voluntary statement) in his cross-examination recorded on 06.12.2023 that the letters were issued to the workman as per his address available on record, is insufficient to assume the delivery of letters. The management No.1 did not produce their office record into evidence showing the available address of the claimant-workman.

23. MW2 Jaspal Singh in his cross-examination (recorded on 30.11.2023) denied the suggestion as wrong that vide letter dated 17.03.2021 / Exhibit 'MW2/5' the services of the workman were terminated. To my opinion, the denial on part of MW2 that the management did not intend to terminate the services of the workman by issuing letter dated 17.03.2021 / Exhibit 'MW2/5' is not acceptable because in his cross-examination MW2 admitted as correct that vide letter Exhibit 'MW2/5' the workman was directed to complete his clearance formalities for full & final settlement. The aforesaid admission on part of MW2 would suggest that the management No.1 intended to effect full & final settlement with the workman, which can be done only when the workman is relieved from service and not during continuity of his service.

24. MW2 in para 4 of his affidavit Exhibit 'MW2/A' deposed that due to exigency of work in other locations of respondent No.1 requirement, he as the DGM Banking, transferred the following employees to their Ahmedabad office as per company requirement :-

- i) Mr. Joginder Pal S/o Gian Chand, Employee Code EMP/CHD00746
- ii) Mr. Ajay Kumar S/o Ram Dular, Employee Code EMP/CHD00748
- iii) Mr. Suresh Kumar S/o Milap Chand, Employee Code EMP/CHD00749
- iv) Mr. Ravinder S/o Ram Nath, Employee Code EMP/CHD00752

25. In the present case, first of all the aforesaid plea taken by MW2 in his examination-in-chief by way of affidavit Exhibit 'MW2/A' is beyond pleadings. Secondly, MW2 in para 7 of his affidavit Exhibit 'MW2/A' deposed that he informed about the mass absenteeism by the applicant and repeated calls received from Mr. Ritesh - Branch Manager, Axis Bank for deficiency in services and he would not accept any contract employees, who are not coming on duty, the bank will not accept such un-authorised absence from their staff, as Bank work was stuck up due to Cash Sorter not reporting for duty. The aforesaid version of MW2 is also beyond pleadings. Besides Axis Bank / management No.2 in its written statement / reply nowhere mentioned that Mr. Ritesh - Branch Manager, Axis Bank telephonically informed the management No.1 about any un-authorised absence of the workman from duty. Management No.1 and 2 did not examine Mr. Ritesh - Branch Manager in their evidence. Moreover, there is no documentary evidence on record to show the company's requirement at Ahmedabad office of management No.1.

26. If for the sake of arguments, it is assumed that the claimant-workman absented from duty w.e.f. 12.02.2021, then also at the most it amounts to misconduct and since the workman fulfills the requirement of

Section 25-B of the ID Act, thus management No.1 was bound to comply with the conditions incorporated in Section 25-F of the ID Act. But management No.1 has failed to comply with mandatory conditions as laid down in Section 25-F of the ID Act. In this regard, MW2 when put to cross-examination by the workman stated that no charge sheet was served to the workman for his alleged absence from duty. Neither any preliminary inquiry nor any regular domestic inquiry was conducted against the workman. No retrenchment compensation was paid to the worker. From the aforesaid version of MW2, it is established that management No.1 has violated the provisions of Section 25-F of the ID Act. The judgment referred by Learned Representative for the workman reported in **2014(11) SCC 85** titled as **Bhuvnesh Kumar Dwivedi Versus Hindalco Industries Limited** is applicable to the facts of the present case to an extent. The relevant portion of the judgment is reproduced as below :-

"Evidently, the above said mandatory procedure has not been followed in the present case. Further, it has been held by this Court in the case of Anoop Sharma v. Executive Engineer, Public Health Division No.1, Panipat, 2010(3) S.C.T. 319 : 2010(5) SCC 497 as under :-

13.... no workman employed in any industry who has been in continuous service for not less than one year under an employer can be retrenched by that employer until the conditions enumerated in Clauses (a) and (b) of Section 25F of the Act are satisfied. In terms of Clause (a), the employer is required to give to the workman one month's notice in writing indicating the reasons for retrenchment or pay him wages in lieu of the notice. Clause (b) casts a duty upon the employer to pay to the workman at the time of retrenchment, compensation equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months. This Court has repeatedly held that Section 25F(a) and (b) of the Act is mandatory and non-compliance thereof renders the retrenchment of an employee nullity - State of Bombay v. Hospital Mazdoor Sabha, AIR 1960 Supreme Court 610, Bombay Union of Journalists v. State of Bombay, (1964) 6 SCR 22, State Bank of India v. N. Sundara Money, (1976) 1 SCC 822, Santosh Gupta v. State Bank of Patiala, (1980) 3 SCC 340, Mohan Lal v. Management of M/s. Bharat Electronics Ltd., (1981) 3 SCC 255, L. Robert D'Souza v. Executive Engineer, Southern Railway, (1982) 1 SCC 645, Surendra Kumar Verma v. Industrial Tribunal, (1980) 4 SCC 443, Gammon India Ltd. V. Niranjan Das, (1984) 1 SCC 509, Gurmail Singh v. State of Punjab, 1991(3) S.C.T. 608 : (1991) 1 SCC 189 and Pramod Jha v. State of Bihar, 2003(2) S.C.T. 296 : (2003) 4 SCC 619. This Court has used different expressions for describing the consequence of terminating a workman's service/employment/engagement by way of retrenchment without complying with the mandate of Section 25F of the Act. Sometimes it has been termed as ab initio void, sometimes as illegal per se, sometimes as nullity and sometimes as non est. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Section 25F(a) and (b) has the effect of rendering the action of the employer as nullity and the employee is entitled to continue in employment as if his services was not terminated."

27. MW2 Jaspal Singh, witness of Management No.1 / service provider during his cross-examination expressed his readiness to re-join the worker but refused to give him the benefit of continuity of service and back wages. In this regard, MW2 when put to cross-examination by the workman stated that we are ready to take in service absentee workers as per availability of vacancy at Chandigarh and nearby stations such as Ludhiana, Jalandhar and Panchkula. MW2 further stated that they are not ready to re-join the workers with continuity of service. They are also not ready to pay back wages for the period of their absence from duty.

MW2 denied the suggestion as wrong that re-joining of a workman without continuity of service amounts to fresh appointment. To my opinion, the conditional offer of management No.1 / service provider to re-join the workman as per availability of the vacancy and without the benefits of continuity of service & back wages is unjustified because as discussed above, in this case, the termination of services of the workman is held illegal being in violation to Section 25-F of the ID Act. In case of wrongful termination of service, reinstatement with continuity of service and back wages is a normal rule. The workman is entitled to the relief of reinstatement with continuity of service under the same terms & conditions as existed before his termination.

28. As far as back wages are concerned, the claimant-workman has alleged that he remained unemployed during the period from the date of termination till date. On the other hand, none of the managements have taken plea of gainful employment in their respective written statements. However, it is argued by Learned Representative for management No.1 that as per the judgment of Hon'ble Supreme Court in *Civil Appeal No. 5390 of 2019 decided on 11th July 2019* tilted as **Chief Regional Manager, United India Insurance Company Limited United India Insurance Company Limited Versus Siraj Uddin Khan**; the principle of 'no work, no pay' applies. In case, the workman is to be reinstated he is not entitled to back wages. To my opinion, the judgment referred (*supra*) by Learned Representative for management No.1 is not applicable to the facts of the present case in view of the judgment referred by Learned Representative for the workman tilted as **P.G.I. of M.E. and Research Versus Raj Kumar**, report in **2001(2) SCC 54**. Under the circumstances, the workman is held entitled to 50% back wages.

29. In the view of discussions made above, termination of the workman is held illegal being in violation to Section 25-F of the ID Act as such the workman is entitled to reinstatement with continuity of service and 50% back wages.

30. Accordingly, issue No.1 & 2 is decided in favour of the workman and against management No.1. Issue No.3 is decided against management No.2 and in favour of the workman.

Relief :

31. In the view of foregoing finding on the issues No.1 & 2 above, this industrial dispute is allowed qua management No.1. The workman is entitled to reinstatement with continuity of service and 50% back wages. Management No.1 is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which management No.1 is liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this award till its actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . . ,

(JAGDEEP KAUR VIRK)

PRESIDING OFFICER,

Industrial Tribunal & Labour Court,

Union Territory, Chandigarh.

UID No. PB0152.

Dated : 14.12.2023.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT**Notification**

The 18th March, 2024

No. 13/2/77-HII(2)-2024/4476.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **71/2021** dated **14.12.2023** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

SURESH KUMAR S/O SH. MEWA LAL, H.NO.1360/22, 'E' BLOCK, ADARSH NAGAR, NAYAGAON, DISTRICT MOHALI. (Workman)

AND

1. M/S CHECKMATE SERVICE PVT. LTD., SCF NO. 128, PHASE-3-B2, DISTRICT MOHALI THROUGH ITS MANAGING DIRECTOR.

2. AXIS BANK LTD., AXIS BANK CURRENCY CHEST, SECTOR 34, CHANDIGARH THROUGH ITS BRANCH MANAGER

AWARD

1. Suresh Kumar, workman has presented industrial dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that on 11.06.2016 the claimant-workman was appointed by management No.1 i.e. M/s Checkmate Services Pvt. Ltd., Mohali as Cash Sorter. The claimant-workman was deployed at the workplace of management No.2 i.e. Axis Bank Ltd., Axis Bank Currency Chest, Sector 34, Chandigarh. The claimant-workman remained there in the continuous employment up to 11.02.2021 when his services were illegally & wrongfully terminated by refusing of work. The claimant-workman was drawing ₹17,000/- per month as wages at the time of termination. On 12.02.2021 the claimant-workman went to attend his normal duty but he was refused work by management No.2 on the pretext that the management No.1 has asked them to refuse work to the worker. No reason of refusal of work was given to the claimant-workman by both the managements. The refusal of work, which amounts to termination, is retrenchment under Section 2(oo) of the ID Act. The management No.1 has also violated Section 25-F of the ID Act. No charge sheet was issued, no inquiry was held and the claimant-workman was not paid retrenchment compensation at the time of termination. Violation of the same makes the termination void. For his reinstatement the claimant-workman served upon the management a demand notice dated 22.02.2021. The management neither denied the contents of the demand notice nor took the claimant-workman back on duty. The Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh was requested for his intervention. Management No.1 appeared before the Conciliation Officer, U.T. Chandigarh one time only and thereafter he did not appear before the conciliation on any date fixed for settlement. The termination is illegal, wrongful, motivated against the principles of natural justice and unfair labour practice. The claimant-workman remained unemployed during the period i.e. from the date of termination to till date. Prayer is made that the claimant-workman be reinstated with continuity of service along with full back wages and without any change in his service condition.

3. On notice, management No.1 contested the claim statement by filing written reply dated 12.11.2022 (filed on 06.12.2022) wherein it is stated that the date of commencement is correct but the answering management did not terminate any employee. It is denied as incorrect that both these managements refused work to the claimant-workman. Since no termination was done, thus retrenchment benefits, charge sheet, inquiry to be held before termination etc. are not applicable. The employees collectively absented and refused to come to work, the matter was taken up with disciplinary action, Checkmate Security Services have made sufficient representation at Labour Department. The applicant's plea that action of the management is illegal, wrongful, motivated, against the principles of natural justice and unfair labour practice is

not acceptable. The claimant-workman's plea of demanding reinstatement with back wages, continuity of service and without any change in service condition etc. is not acceptable. No such intentions and acts were initiated by employer but all outstanding efforts were made to get the employee to work as the company had to face huge losses.

4. Management No.2 contested the claim statement by filing separate written statement dated 01.11.2022 wherein preliminary objection is taken on the ground that the claim statement is not legally maintainable as there is privity of contract between claimant-workman and the answering management and the claimant-workman was never hired by the answering management.

5. On merits, it is denied for want of knowledge that on 11.06.2016 the claimant-workman was appointed as Cash Sorter by management No.1. The answering management had hired the services of management No.1 but appointment and termination of any worker was the sole discretion of management No.1 and the answering management has no role to play in it. The alleged the claimant-workman was not on the roll of bank nor employee of the bank nor even any salary was paid to him by the answering management. No refusal as alleged by the claimant-workman was conveyed by the officials of the answering management. No alleged demand notice was ever served upon the answering management and also no notice was received by the answering management from the office of Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh. The claimant-workman never remained employee or worker of the answering management. Rest of the averments of the claim statement are denied being incorrect and prayer is made that claim statement may be dismissed with cost.

6. The claimant-workman filed rejoinder to the written statement of management No.1 on 17.01.2023 wherein contents of the written statement except admitted facts are denied and averments of claim statement are reiterated. Rejoinder to written statement of management No.2 was not filed.

7. From the pleadings of the parties, following issues were framed vide order dated 20.03.2023 :-

1. Whether the termination of the workman is illegal ? OPW
2. If issue No.1 is proved in affirmative, whether the workman is entitled to reinstatement with continuity of service, full back wages and all other consequential benefits as prayed for ? OPW
3. Whether the claim statement qua management No.2 is not maintainable? OPM (management No.2)
4. Relief.

8. In evidence, claimant-workman Suresh Kumar examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A'. On 08.09.2023 Learned Representative for the claimant-workman closed the evidence in affirmative.

9. On the other hand, management No.2 examined MW1 Amit Rajpal - Senior Manager, Axis Bank, Sector 34, Chandigarh, who tendered his affidavit Exhibit 'MW1/A'.

10. Management No.1 examined MW2 Jaspal Singh - DGM (Banking) of M/s Checkmate Services Pvt. Ltd., Phase 3B-II, SAS Nagar Mohali, who tendered into evidence his affidavit vide Exhibit 'MW2/A' along with notary attested copies of documents

Exhibit 'MW2/1' is authority letter dated 28.03.2019 in Jaspal Singh issued by the Managing Director & Company Secretary of management No.1.

Exhibit 'MW2/2' is aadhar card of Jaspal Singh.

Exhibit MW2/3' is warning letter dated 12.02.2021 issued to the workman by the authorised signatory of management No.1 through courier.

Exhibit 'MW2/3-A' is original receipt of DTDC Courier Agencies.

Exhibit 'MW2/4' is absenteeism letter dated 18.02.2021 for not reporting on duty issued to the workman by the authorised signatory of management No.1 through registered post.

Exhibit 'MW2/4-A' is original postal receipt dated 20.02.2021.

Exhibit 'MW2/5' is letter dated 17.03.2021 for final intimation on not reporting on duty issued to the workman by the authorised signatory of management No.1 through registered post.

Exhibit 'MW2/5-A' is original postal receipt dated 19.03.2021.

Exhibit 'MW2/6' is original undelivered courier envelop bearing remarks 'the phone relates to some other person'.

Exhibit 'MW2/7' is original undelivered registered letter accompanied with acknowledgment bearing postal endorsement 'insufficient address'.

Exhibit 'MW2/8' is original undelivered registered letter accompanied with acknowledgment bearing postal endorsement 'insufficient address'.

11. On 16.11.2023 Learned Representative for management No.2 closed the evidence on behalf of management No.2. On 06.12.2023 Shri Baljinder Pal Singh - Representative for management No.1 closed oral evidence. On 14.12.2023 Shri Baljinder Pal Singh - Representative for management No.1 closed documentary evidence.

12. I have heard arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise findings are as below :-

Issue No. 1 to 3 :

13. Onus to prove issue No.1 & 2 is on the workman and onus to prove issue No.3 is on management No.2.

14. Under these issues claimant-workman Suresh Kumar examined himself as his own witness as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto which are not reproduced here for the sake of brevity.

15. Management No.1 has examined MW2 Jaspal Singh - DGM (Banking), who vide his affidavit Exhibit 'MW2/A' deposed that he is working with management No.1 as Deputy General Manager (Banking) with Employee Code EMP/COR006558, Office at SCF 128, Phase 3B-II, SAS Nagar, Mohali from 06.05.2014 and he is personally aware of the facts of this case. Management No.1 is a company registered as per the provisions of the Company's Act, 1956. Management No.1 is engaged in business of providing security services, cash sorter services across the India to its customers on the basis of requirement and as per contract terms and agreement. Contrary to the workman's claim of illegal termination, he submits that the employment of the claimant-workman was not terminated. Due to exigency of work in the other location of management No.1, he as DGM (Banking) transferred the following four employees to their Ahmedabad office as per company's requirement :-

- i) Mr. Joginder Pal S/o Gian Chand, Employee Code EMP/CHD00746
- ii) Mr. Ajay Kumar S/o Ram Dular, Employee Code EMP/CHD00748
- iii) Mr. Suresh Kumar S/o Milap Chand, Employee Code EMP/CHD00749
- iv) Mr. Ravinder S/o Ram Nath, Employee Code EMP/CHD00752

These employees were transferred to their Ahmedabad office. They were given transfer letters given by hand to report to Checkmate, Ahmedabad Office under his instructions (as per company's requirement) on 11.02.2021 sent through Indian post RPAD. These letters were given in person which they refused to accept. They were briefed regarding the transfer, which they refused to accept, return letter with remarks of refusal. The transfer letters were displayed on the notice board of the Axis Bank on same day i.e. on 11.02.2021. On 12.02.2021, he was on leave and was attending function at his home town, when he received a call from Mr. Ritesh Kumar - Branch Manager, Axis Bank, stating that no employee of Checkmate Services had reported for duty and when they and he had tried to contact their employee, they were absent. The claimant-workman stated that they will not come to work and all were not willing to come for duty any more. He informed about the mass absenteeism by the claimant-workman and repeated calls were received from Mr. Ritesh - Branch Manager, Axis Bank for deficiency in services and he would not accept any contract employee who have not come on duty, the bank will not accept such un-authorised absence from their staff as bank work stuck up due

to cash sorter not reporting for duty. He kept on calling absentee employees from his phone but his phone was not picked by any of the absent employees for the next 2 days i.e. 12.02.2021 to 14.02.2021. On resuming his office on 15.02.2021, he himself again tried to contact the absconding employees, only Mr. Ravi Kumar, EMP/CHD05592 and Mr. Pankaj Kataria, EMP/CHD/03936 picked the call and agreed to come to Mohali Office SCF 128, Phase 3B-II, SAS Nagar Mohali. On next day i.e. 16.02.2021 he himself tried to convince both the absconded employees to resume their duties as the bank officials were putting lot of pressure and the work stoppage had very negative impact on the bank services and their reputation and high penalty clause in the agreement. Both the employees Mr. Ravi Kumar and Mr. Pankaj Kataria were ready to understand and joined the duties but stated that other fellow employees had threatened them not to join the duty. Meanwhile they have appointed new staff in place of absconded employees to fill the bank requirement and their repetition as service provider as well to avoid high penalty of non-providing contractual staff as per agreement. Also they have approached the absconded staff to join duty at the other place. They have requirement at Ahemdabad, for that they had sent the letter through RP/AD post letter dated 11.02.2021 as well sent the absenteeism letters on 22.02.2021 and final letter on 17.03.2021 to the claimant-workman to join duty as his services has not been terminated nor any violation of his appointment services conditions. He asserts that the management has never terminated the services of the claimant-workman. On the contrary the management has provided multiple opportunities to the claimant-workman to re-join duty even after a mass absconding incident incurred. The claimant-workman however failed to respond or re-join and instead engaged in mass absconding without any prior intimation. This action appears to be an attempt to harass both the managements to coercive tactics by the claimant-workman. The management remains willing to offer employment as there has been no formal termination of services. Consequently, there is no basis for claims related to back wages or any other form of compensation, given that the service has not been terminated. MW2 supported his oral version with documents Exhibit 'MW2/1' to Exhibit 'MW2/8'.

16. The management No.2 examined MW1 Amit Raj Pal - Senior Manager, Axis Bank, who vide his affidavit Exhibit 'MW1/A' wherein he deposed that the present alleged claim filed by the claimant against management No.2 is legally maintainable as there is no privity of contract between claimant and management No.2 and the claimant was never hired by management No.2. Management No.2 had hired the services of management No.1 but the appointment and termination of any worker was the sole discretion of management No.1. Management No.2 had no role to play in it. The alleged claimant was not on the roll of the bank, nor employee of the bank nor even any salary was paid to him by management No.2. No notice as alleged was ever served upon management No.2 and also no notice was received by management No.2 from the office of Additional Labour Commissioner-cum-Conciliation officer, U.T. Chandigarh. The claimant never remained employee or worker of management No.2.

17. From the oral as well as documentary evidence led by the parties it comes out that undisputedly the claimant-workman was appointed on 11.06.2016 as Cash Sorter by management No.1 and was deployed at the work place of management No.2. In this regard, AW1 when to put to cross-examination by management No.2 stated that Axis Bank / management No.2 did not issue him any appointment letter and termination letter / order. He was deployed with the Axis Bank / management No.2 by M/s Checkmate i.e. management No.1. MW1 (witness of management No.2) when to put to cross-examination by the workman admitted as correct that the Axis Bank has contract with the Checkmate Services for providing the manpower. MW1 admitted as correct that the Checkmate Services provided about 15 workers including the claimant of the present case for deployment with Chandigarh Branch of Axis Bank. MW1 stated that bank was not maintaining the attendance of contractual workers. The supervisor of Checkmate was maintaining their attendance. The bank had not been supervising the disbursement of wages and provident fund etc. of the contractual workers. MW2 Jaspal Singh (witness of management No.1) when to put cross-examination by the workman stated that the agreement of management No.1 with the Axis Bank Ltd. / management No.2 was at central level and there was no local agreement. Under the said agreement, management No.1 provided 18 workers to management No.2 around year 2016. From the above-mentioned version of AW1, MW1 and MW2 it is duly established on record that management No.1 i.e. M/s Checkmate Services Pvt. Ltd. is service provider, who under the contract has provided security services and Cash Sorter services to management No.2 i.e. Axis Bank, Sector 34, Chandigarh and the claimant-workman was deployed by the management No.1 at the work place of management No.2 as a Cash Sorter. Since management No.1 maintained the record of attendance and supervision of work of claimant-workman through its Supervisor, thus the claimant-workman was under the direct employment of management No.1 and was a contractual worker deployed with management

No.2. There is no direct relationship of employer-employee between management No.2 and claimant-workman. Since management No.2 has hired the services of claimant-workman from its service provider i.e. management No.1, therefore, management No.2 was necessary party, being principal employer, and the claim qua management No.2 is duly maintainable.

18. Admittedly, the authority to appoint, transfer and terminate the contractual employee (herein claimant-workman) was with the service provider i.e. management No.1. Learned Representative for the claimant-workman argued that the claimant-workman remained in continuous employment of the management No.1 from the date of appointment i.e. 11.06.2016 up to 11.02.2021, thus completed 240 days of continuous service in 12 calendar months preceding termination of his services (service being verbally terminated on 12.02.2021). The claimant-workman has alleged that his last drawn wages were ₹ 17,000/- per month. In this regard MW2 (witness of management No.1) was put to cross-examination by workman stated that there is no dispute with regard to the date of appointment, amount of monthly salary and the date of dispensing with of their services. MW2 further stated that all the workers including the workman had continuously worked for more than 240 days in 12 calendar months preceding their absence from duty.

19. Management No.1 has taken the plea that 15 contractual workers were deployed with management No.2. On 11.02.2021, out of 15 contractual workers, 4 workers namely Ravinder, Joginder Pal, Suresh Kumar and Ajay Kumar were transferred to Ahmedabad. 4 workers who were transferred refused to accept the transfer letter and refused to join at Ahmedabad. The transfer-cum-movement order was also affixed on the notice board of management No.2 i.e. Axis Bank Limited. In order to put pressure upon the management No.1 to cancel the transfer order of four employees all 15 contractual workers collectively absented from duty w.e.f. 12.02.2021. After extensive follow-ups, 2 workers returned to duty with the same employment terms & conditions whereas the remaining 13 including the workman of the present case did not resume duty. It is further argued by Learned Representative for management No.1 that M/s Checkmate Service Pvt. Ltd. has not terminated the service of any of the workman in any manner. Management No.1 has followed due procedure issuing absenteeism letters and reminders, emphasising the company's intent for workman to resume duty but he refused to receive. Management No.1 also issued warning letter dated 12.02.2021 / Exhibit 'MW2/3' through courier vide receipt Exhibit 'MW2/3A', issued another absenteeism letter dated 18.02.2021 / Exhibit 'MW2/4' vide postal receipt Exhibit 'MW2/4A' and final intimation for not reporting on duty vide letter dated 17.03.2021 Exhibit 'MW2/5' through registered post vide Exhibit 'MW2/5A'. Despite issuance of various letters, the claimant-workman did not join back the duty, thus, the claimant-workman himself abandoned the job, though his services were never terminated by management No.1. The workman failed to report to his duty at the work place without any prior notice or explanation which is a clear violation of company's policy and established work expectations. The employer has the inherent right to manage its work force including making decisions regarding re-location. Management No.1 has acted in accordance with its established policies and procedures which were communicated to all the employees by all means to join duty.

20. On the other hand, Learned Representative for the workman contended that no letter / letters as alleged by management No.1 were ever received by the claimant-workman. There is nothing on record to show that the letters allegedly issued through courier or registered post were actually delivered to the claimant-workman. In the present case, there is no dispute with regard to the date of appointment, date of dispensing with the services and monthly salary of the workman. As proved from the cross-examination of MW2 Jaspal Singh (witness of management No.1), the workman had continuously worked for more than 240 days in 12 calendar months preceding his alleged absence from duty, the claimant-workman fulfills the requirement of continuous service as defined in Section 25-B of the ID Act. Once the workman is covered under Section 25-B of the ID Act, then the provision of Section 25-F stands attracted. For better appreciation Section 25-F of the ID Act is reproduced as below :-

"25F. Conditions precedent to retrenchment of workmen.-No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;*

- (b) *the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and*
- (c) *notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette]."*

21. Section 25-F of the ID Act lays down certain conditions which are precedent to retrenchment of workman. In the present case, the management No.1 has taken the plea that the claimant-workman absented from duty w.e.f. 12.02.2021 in protest to the transfer order of co-workers from Chandigarh to Ahmedabad. Moreover, the plea taken by the management No.1 during its evidence that the workman absented in protest to transfer order of the co-worker and to pressurize the management No.1 to withdraw the transfer order of the co-workers is beyond pleadings. The written statement finds no reference of any alleged transfer order of any of the workmen deployed with the Axis Bank. In this regard MW2 Jaspal Singh in his cross-examination stated that in written reply filed by management No.1 to the claim statement, it is nowhere mentioned that the worker was transferred from Chandigarh to some other place. Besides, the management has failed to prove into evidence the transfer order of the co-workers. The contention raised by Learned Representative for the claimant-workman that no letter allegedly issued by the management No.1 was served to the workman, carries force as MW2 (witness of management No.1) when put to cross-examination by workman stated in his statement recorded on 30.11.2023 that some of the letters were issued through courier and some through speed post to the workers. First warning letter was issued through courier to all absentee workers. No delivery report of courier was received from the concerned courier agency. In the claim statement address of the claimant-workman is mentioned as House No.1360/22, E-Block, Adarsh Nagar, Nayagaon, Distt. Mohali whereas the letters Exhibits 'MW2/6', 'MW2/7' and 'MW2/8' are issued to the claimant workman on different address i.e. Vill. Adarsh Nagarnayagaon, P.O. Nayagaon, Teh. Kharar, Distt. Mohali (PB) and the said letters Exhibit 'M2/6' and Exhibit 'M2/7' are received back undelivered with the postal endorsement 'insufficient address' and letter Exhibit 'M2/8' is received back undelivered with courier agency endorsement 'phone relate to another person'. Management No.1 in cross-examination of claimant-workman / AW1 did not put his postal / correspondence address to him. Therefore, oral version of MW2 (his voluntary statement) in his cross-examination recorded on 06.12.2023 that the letters were issued to the workman as per his address available on record is insufficient to assume the delivery of letters. The management No.1 did not produce their office record into evidence showing the local address of the claimant-workman.

22. MW2 Jaspal Singh in his cross-examination (recorded on 30.11.2023) denied the suggestion as wrong that vide letter dated 17.03.2021 / Exhibit 'MW2/5' the services of the workman were terminated. To my opinion, the denial on part of MW2 that the management did not intend to terminate the services of the workman by issuing letter dated 17.03.2021 / Exhibit 'MW2/5' is not acceptable because in his cross-examination MW2 admitted as correct that vide letter Exhibit 'MW2/5' the workman was directed to complete his clearance formalities for full & final settlement. The aforesaid admission on part of MW2 would suggest that the management No.1 intended to effect full & final settlement with the workman, which can be done only when the workman is relieved from service and not during continuity of his service.

23. MW2 in para 4 of his affidavit Exhibit 'MW2/A' deposed that due to exigency of work in other locations of respondent No.1 requirement, he as the DGM Banking, transferred the following employees to their Ahmedabad office as per company requirement :-

- i) Mr. Joginder Pal S/o Gian Chand, Employee Code EMP/CHD00746
- ii) Mr. Ajay Kumar S/o Ram Dular, Employee Code EMP/CHD00748
- iii) Mr. Suresh Kumar S/o Milap Chand, Employee Code EMP/CHD00749
- iv) Mr. Ravinder S/o Ram Nath, Employee Code EMP/CHD00752

24. In the present case, first of all the aforesaid plea taken by MW2 in his examination-in-chief by way of affidavit Exhibit 'MW2/A' is beyond pleadings. Secondly, MW2 in para 7 of his affidavit Exhibit 'MW2/A'

deposed that he informed about the mass absenteeism by the applicant and repeated calls received from Mr. Ritesh - Branch Manager, Axis Bank for deficiency in services and he would not accept any contract employees, who are not coming on duty, the bank will not accept such un-authorised absence from their staff, as Bank work was stuck up due to Cash Sorter not reporting for duty. The aforesaid version of MW2 is also beyond pleadings. Besides Axis Bank / management No.2 in its written statement / reply nowhere mentioned that Mr. Ritesh - Branch Manager, Axis Bank telephonically informed the management No.1 about any un-authorised absence of the workman from duty. Management No.1 and 2 did not examine Mr. Ritesh - Branch Manager in their evidence. Moreover, there is no documentary evidence on record to show the company's requirement at Ahmedabad office of management No.1.

25. If for the sake of arguments, it is assumed that the claimant-workman absented from duty w.e.f. 12.02.2021, then also at the most it amounts to misconduct and since the workman fulfills the requirement of Section 25-B of the ID Act, thus management No.1 was bound to comply with the conditions incorporated in Section 25-F of the ID Act. But management No.1 has failed to comply with mandatory conditions as laid down in Section 25-F of the ID Act. In this regard, MW2 when put to cross-examination by the workman stated that no charge sheet was served to the workman for his alleged absence from duty. Neither any preliminary inquiry nor any regular domestic inquiry was conducted against the workman. No retrenchment compensation was paid to the worker. From the aforesaid version of MW2, it is established that management No.1 has violated the provisions of Section 25-F of the ID Act. The judgment referred by Learned Representative for the workman reported in **2014(11) SCC 85** titled as **Bhuvnesh Kumar Dwivedi Versus Hindalco Industries Limited** is applicable to the facts of the present case to an extent. The relevant portion of the judgment is reproduced as below :-

"Evidently, the above said mandatory procedure has not been followed in the present case. Further, it has been held by this Court in the case of Anoop Sharma v. Executive Engineer, Public Health Division No.1, Panipat, 2010(3) S.C.T. 319 : 2010(5) SCC 497 as under :-

13.... no workman employed in any industry who has been in continuous service for not less than one year under an employer can be retrenched by that employer until the conditions enumerated in Clauses (a) and (b) of Section 25F of the Act are satisfied. In terms of Clause (a), the employer is required to give to the workman one month's notice in writing indicating the reasons for retrenchment or pay him wages in lieu of the notice. Clause (b) casts a duty upon the employer to pay to the workman at the time of retrenchment, compensation equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months. This Court has repeatedly held that Section 25F(a) and (b) of the Act is mandatory and non-compliance thereof renders the retrenchment of an employee nullity - State of Bombay v. Hospital Mazdoor Sabha, AIR 1960 Supreme Court 610, Bombay Union of Journalists v. State of Bombay, (1964) 6 SCR 22, State Bank of India v. N. Sundara Money, (1976) 1 SCC 822, Santosh Gupta v. State Bank of Patiala, (1980) 3 SCC 340, Mohan Lal v. Management of M/s. Bharat Electronics Ltd., (1981) 3 SCC 255, L. Robert D'Souza v. Executive Engineer, Southern Railway, (1982) 1 SCC 645, Surendra Kumar Verma v. Industrial Tribunal, (1980) 4 SCC 443, Gammon India Ltd. V. Niranjan Das, (1984) 1 SCC 509, Gurmail Singh v. State of Punjab, 1991(3) S.C.T. 608 : (1991) 1 SCC 189 and Pramod Jha v. State of Bihar, 2003(2) S.C.T. 296 : (2003) 4 SCC619. This Court has used different expressions for describing the consequence of terminating a workman's service/employment/engagement by way of retrenchment without complying with the mandate of Section 25F of the Act. Sometimes it has been termed as ab initio void, sometimes as illegal per se, sometimes as nullity and sometimes as non est. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Section 25F(a) and (b) has the effect of rendering the action of the employer as nullity and the employee is entitled to continue in employment as if his services was not terminated."

26. MW2 Jaspal Singh, witness of Management No.1 / service provider during his cross-examination expressed his readiness to re-join the worker but refused to give him the benefit of continuity of service and

back wages. In this regard, MW2 when put to cross-examination by the workman stated that we are ready to take in service absentee workers as per availability of vacancy at Chandigarh and nearby stations such as Ludhiana, Jalandhar and Panchkula. MW2 further stated that they are not ready to re-join the workers with continuity of service. They are also not ready to pay back wages for the period of their absence from duty. MW2 denied the suggestion as wrong that re-joining of a workman without continuity of service amounts to fresh appointment. To my opinion, the conditional offer of management No.1 / service provider to re-join the workman as per availability of the vacancy and without the benefits of continuity of service & back wages is unjustified because as discussed above, in this case, the termination of services of the workman is held illegal being in violation to Section 25-F of the ID Act. In case of wrongful termination of service, reinstatement with continuity of service and back wages is a normal rule. The workman is entitled to the relief of reinstatement with continuity of service under the same terms & conditions as existed before his termination.

27. As far as back wages are concerned, the claimant-workman has alleged that he remained unemployed during the period from the date of termination till date. On the other hand, none of the managements have taken plea of gainful employment in their respective written statements. However, it is argued by Learned Representative for management No.1 that as per the judgment of Hon'ble Supreme Court in *Civil Appeal No. 5390 of 2019 decided on 11th July 2019* titled as *Chief Regional Manager, United India Insurance Company Limited United India Insurance Company Limited Versus Siraj Uddin Khan*; the principle of 'no work, no pay' applies. In case, the workman is to be reinstated he is not entitled to back wages. To my opinion, the judgment referred (supra) by Learned Representative for management No.1 is not applicable to the facts of the present case in view of the judgment referred by Learned Representative for the workman titled as *P.G.I. of M.E. and Research Versus Raj Kumar*, report in *2001(2) SCC 54*. Under the circumstances, the workman is held entitled to 50% back wages.

28. In the view of discussions made above, termination of the workman is held illegal being in violation to Section 25-F of the ID Act as such the workman is entitled to reinstatement with continuity of service and 50% back wages.

29. Accordingly, issue No.1 & 2 is decided in favour of the workman and against management No.1. Issue No.3 is decided against management No.2 and in favour of the workman.

Relief :

30. In the view of foregoing finding on the issues No.1 & 2 above, this industrial dispute is allowed qua management No.1. The workman is entitled to reinstatement with continuity of service and 50% back wages. Management No.1 is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which management No.1 is liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this award till its actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . . ,

(JAGDEEP KAUR VIRK)

PRESIDING OFFICER,

Industrial Tribunal & Labour Court,

Union Territory, Chandigarh.

UID No. PB0152.

Dated : 14.12.2023.

Secretary Labour,
Chandigarh Administration.

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